

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF OHIO
3 WESTERN DIVISION AT CINCINNATI

4
5
6 WALTER W. THIEMANN, on :
7 behalf of himself and :
8 of all others similarly :
9 situated, :

10 Plaintiff, :

11 VS. : CASE NO. C-1-00793

12 OHSI FINANCIAL CORP., :
13 OAK HILLS SAVINGS AND :
14 LOAN COMPANY, F.A., :
15 NORBERT G. BRINKER, :
16 KENNETH L. HANAUER, :
17 WILLIAM R. HILLEBRAND, :
18 ALVIN E. HUCKE, THOMAS :
19 E. MCKIERNAN, JOSEPH J. :
20 TENOEVER, HOWARD N. :
21 ZOELLNER, PROVIDENT :
22 FINANCIAL GROUP, INC., :
23 ROBERT L. HOVERSON, :
24 JACK M. COOK, THOMAS D. :
25 GROTE, JR., PHILIP R. :
26 MYERS, JOSEPH A. PEDOTO, :
27 JOSEPH A. STEGER, :
28 CHRISTOPHER J. CAREY, :
29 CLIFFORD ROE, and :
30 DINSMORE & SHOHL, LLP, :

31 Defendants, :
32

33 Deposition of SIDNEY PEERLESS, M.D., a
34 witness herein, called by the plaintiff for
35 cross-examination, pursuant to the Federal

1 Rules of Civil Procedure, taken before me, Lee
2 Ann Williams, a Registered Professional
3 Reporter and Notary Public in and for the State
4 of Ohio, at the offices of Gene Mesh &
5 Associates, 2605 Burnet Avenue, Cincinnati,
6 Ohio 45219, on Wednesday, September 1, 2004, at
7 9:07 a.m.

8 APPEARANCES:

9 On behalf of the Plaintiff:

10 Michael G. Brautigam, Esq.
11 Gene Mesh & Associates
12 2605 Burnet Avenue
13 Cincinnati, Ohio 45219

14 On behalf of the Defendants:

15 James E. Burke, Esq.
16 Keating, Muething & Klekamp
17 1400 Provident Tower
18 One East Fourth Street
19 Cincinnati, Ohio 45202

20 On behalf of the Defendants:

21 James P. Fleisher, Esq.
22 Bieser, Greer, Landis
23 400 National City Center
24 Six North Main Street
Dayton, Ohio 45402

1 STIPULATIONS

2 It is stipulated by and among counsel for
3 the respective parties that the deposition of
4 SIDNEY PEERLESS, M.D., a witness herein, called
5 by the plaintiff for cross-examination pursuant
6 to the Federal Rules of Civil Procedure, may be
7 taken at this time by the notary; that said
8 deposition may be reduced to writing in
9 stenotypy by the notary, whose notes may then
10 be transcribed out of the presence of the
11 witness; and that proof of the official
12 character and qualifications of the notary are
13 expressly waived.

1 INDEX

2 Examination of SIDNEY PEERLESS, M.D. Page
3 By Mr. Brautigam: 5

4
5
6 Plaintiff's Exhibit Page Identified
7 No. 114 80

5

1 **SIDNEY PEERLESS, M.D.**
2 having been first duly sworn, testified as
3 follows:

4 **CROSS-EXAMINATION**

5 **BY MR. BRAUTIGAM:**

09:04:52 6 **Q. Good morning, Dr. Peerless. My**
09:04:54 7 **name is Michael G. Brautigam and I represent**
09:04:56 8 **Walter Thiemann, Gary and Lisa Meyer and a**
09:05:00 9 **putative class of OHSL shareholders.**

09:05:02 10 **Dr. Peerless, you've been a**
09:05:04 11 **director of Provident for how many years?**

09:05:06 12 **A. Twenty-seven.**

09:05:08 13 **Q. And you're a friend of Carl**
09:05:10 14 **Lindner; is that right?**

09:05:10 15 **A. Right.**

09:05:10 16 **Q. And how long have you been a**
09:05:12 17 **friend of Carl Lindner?**

09:05:12 18 **A. Same length of time.**

09:05:14 19 **Q. And how did you come to know Mr.**
09:05:16 20 **Lindner?**

09:05:16 21 **A. I was put on the Board by Joe**
09:05:18 22 **Rippe when he became president. And I was**
09:05:24 23 **interviewed by Mr. Lindner at that time, before**
09:05:26 24 **I was accepted, by he and Sandy Heiman and**

7

09:06:50 1 **circumstance?**

09:06:50 2 **MR. BURKE: Objection.**

09:06:52 3 **A. No.**

09:06:52 4 **MR. BURKE: That's an improper**
09:06:52 5 **question. He didn't say that. This is --**
09:06:54 6 **Michael, if you're going to start this tact,**
09:06:56 7 **I'm going to call Gene because I'd like Gene to**
09:07:00 8 **take this deposition. This is disrespectful**
09:07:02 9 **and I think it's unnecessary.**

09:07:04 10 **MR. BRAUTIGAM: Jim, we don't need**
09:07:06 11 **speaking objections.**

09:07:06 12 **MR. BURKE: That's not even an**
09:07:06 13 **objection.**

09:07:08 14 **MR. BRAUTIGAM: You can express**
09:07:08 15 **your preferences for whomever you'd like to**
09:07:12 16 **take this, but it's not going to change**
09:07:14 17 **anything. Now, I'm going back to my**
09:07:16 18 **examination and you're not going to interrupt**
09:07:18 19 **it anymore.**

09:07:18 20 **MR. BURKE: I am going to**
09:07:18 21 **interrupt it if you're going to harass this**
09:07:22 22 **witness. I think it's improper. It wasn't an**
09:07:24 23 **objection at all. It was a statement. That's**
09:07:26 24 **an improper question.**

6

09:05:32 1 **members of the Board. And that was the first**
09:05:34 2 **time I met him.**

09:05:36 3 **Q. And what skills did you bring to**
09:05:36 4 **the Provident Board 27 years ago?**

09:05:42 5 **A. Supposedly veracity.**

09:05:46 6 **Q. What else?**

09:05:50 7 **A. And matters that pertain to**
09:05:54 8 **medical things.**

09:05:56 9 **Q. Is that of relevance to a public**
09:05:58 10 **company that does banking?**

09:06:00 11 **MR. BURKE: Objection. Calls for**
09:06:02 12 **speculation.**

09:06:02 13 **A. Sometimes.**

09:06:04 14 **Q. Okay. In what circumstance is**
09:06:06 15 **your medical background relevant?**

09:06:06 16 **A. Sometimes medical problems would**
09:06:08 17 **have arisen that involved the knowledge of**
09:06:12 18 **medicine.**

09:06:14 19 **Q. Give me an example, please.**

09:06:26 20 **A. The -- I'm trying to think.**
09:06:36 21 **People or employees being injured and they**
09:06:36 22 **wanted an opinion on the medical situation.**

09:06:44 23 **Q. So you would have access to an**
09:06:46 24 **employee's confidential medical records in that**

8

09:07:26 1 **BY MR. BRAUTIGAM:**

09:07:26 2 **Q. Dr. Peerless, how old are you?**

09:07:28 3 **A. Eighty-two.**

09:07:30 4 **Q. Does Provident or did Provident**
09:07:32 5 **have a mandatory retirement age for Board**
09:07:34 6 **members?**

09:07:34 7 **A. No.**

09:07:34 8 **Q. Why not?**

09:07:36 9 **MR. BURKE: Objection. Calls for**
09:07:36 10 **speculation.**

09:07:36 11 **A. I don't know.**

09:07:38 12 **Q. Let's talk a little bit about your**
09:07:40 13 **educational background. I understand that**
09:07:42 14 **you're a retired physician and surgeon; is that**
09:07:44 15 **right?**

09:07:46 16 **A. Right.**

09:07:46 17 **Q. How long have you been retired?**

09:07:48 18 **A. Six years.**

09:07:48 19 **Q. And your specialty was**
09:07:52 20 **otolaryngology?**

09:07:52 21 **A. Right.**

09:07:54 22 **Q. And what is that?**

09:07:56 23 **A. That's head and neck surgery.**

09:08:04 24 **Q. And when did you give up actively**

9

09:08:06 1 performing surgery?
 09:08:08 2 A. Around six years ago.
 09:08:12 3 Q. And where did you go to college,
 09:08:12 4 Dr. Peerless?
 09:08:14 5 A. University of Cincinnati.
 09:08:16 6 Q. And when did you graduate?
 09:08:18 7 A. 1945.
 09:08:18 8 Q. And what was your degree in?
 09:08:22 9 A. A medical degree. Bachelor of
 09:08:24 10 Medicine.
 09:08:24 11 Q. Oh, Bachelor of Medicine?
 09:08:26 12 A. Yeah. And then I went to Harvard
 09:08:30 13 to do postgraduate work.
 09:08:30 14 Q. Did you say Harvard?
 09:08:32 15 A. Harvard.
 09:08:32 16 Q. When you say postgraduate work,
 09:08:34 17 was that medical school?
 09:08:36 18 A. No. That was after medical
 09:08:38 19 school.
 09:08:40 20 Q. Okay. You got a medical degree?
 09:08:42 21 A. From the University of Cincinnati.
 09:08:42 22 Q. From the University of Cincinnati
 09:08:44 23 in 1945; is that right?
 09:08:46 24 A. Then I went into the service for

11

09:09:46 1 Q. Have you served on the Board of
 09:09:48 2 any other public companies?
 09:09:50 3 A. Well, I'm on the Board of
 09:09:52 4 Cincinnati Jewish Foundation.
 09:09:58 5 Q. That's a nonprofit, right?
 09:09:58 6 A. Nonprofit. And also the
 09:10:00 7 Cincinnati Foundation, I was on the Board there
 09:10:02 8 for four years.
 09:10:04 9 Q. Is that also a nonprofit?
 09:10:06 10 A. Nonprofit. I'm on the board of
 09:10:08 11 Children's Hospital right now, and also I've
 09:10:12 12 been on the board of Jewish Hospital, and
 09:10:16 13 that's about it.
 09:10:20 14 Q. Are Children's and Jewish Hospital
 09:10:22 15 nonprofit entities?
 09:10:24 16 A. Yes.
 09:10:26 17 Q. Were you a Provident shareholder
 09:10:28 18 for many years?
 09:10:30 19 A. Only after I was appointed to the
 09:10:32 20 Board.
 09:10:32 21 Q. So for 27 years you've been a
 09:10:34 22 Provident shareholder?
 09:10:34 23 A. Yeah, right.
 09:10:36 24 Q. And are you a National City

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09:08:46 1 two years. And then I went to Harvard for
 09:08:50 2 specialty work.
 09:08:56 3 Q. Because of the war, did you become
 09:08:58 4 a doctor in some kind of an accelerated manner?
 09:09:02 5 A. Yes. They had a three year
 09:09:04 6 acceleration.
 09:09:06 7 Q. So your Bachelor of Medicine is
 09:09:10 8 the degree that conferred a medical doctor on
 09:09:12 9 you; is that right?
 09:09:12 10 A. Right.
 09:09:14 11 Q. Okay. Got it. Let's talk about
 09:09:18 12 your career since you've returned from Harvard.
 09:09:22 13 What was your first professional position?
 09:09:24 14 A. First -- I was associated with a
 09:09:26 15 doctor by the name of Dr. Gerson Loewenthal for
 09:09:30 16 two years. And then I went into practice for
 09:09:32 17 my -- on my own.
 09:09:36 18 Q. And were you performing surgery
 09:09:36 19 the whole time?
 09:09:38 20 A. Yes, the whole time.
 09:09:40 21 Q. So you've seen many medical
 09:09:42 22 advances in terms of imaging and things like
 09:09:44 23 that?
 09:09:44 24 A. Oh, yes. Yes, yes.

12

09:10:38 1 shareholder today?
 09:10:40 2 A. Yes.
 09:10:42 3 Q. As a Provident shareholder, you
 09:10:44 4 received all of the public documents from
 09:10:48 5 Provident in due course, such as annual and
 09:10:50 6 quarterly reports, correct?
 09:10:54 7 MR. BURKE: Objection to form.
 09:10:56 8 A. Yes.
 09:10:58 9 Q. And you're able to read and
 09:10:58 10 interpret Provident's public documents,
 09:11:00 11 correct?
 09:11:00 12 MR. BURKE: Objection.
 09:11:00 13 A. I think I am.
 09:11:02 14 Q. Are you familiar with the term
 09:11:06 15 material?
 09:11:06 16 MR. BURKE: Objection. Calls for
 09:11:06 17 speculation.
 09:11:08 18 A. It's a very loose term.
 09:11:12 19 Q. Do you have a working definition
 09:11:12 20 of the term material?
 09:11:14 21 A. No.
 09:11:14 22 MR. BURKE: Objection. No
 09:11:16 23 context.
 09:11:18 24 Q. Would you pick up what has

13

09:11:18 1 previously been marked Plaintiff's Exhibit 90?

09:11:18 2 A. (Witness complied.)

09:11:38 3 Q. Dr. Peerless, you've seen

09:11:40 4 Plaintiff's Exhibit 90 before, correct?

09:11:42 5 A. Yes.

09:11:42 6 Q. That's the 2002 PFGI annual

09:11:44 7 report, correct?

09:11:44 8 A. Right.

09:11:46 9 Q. And you received that as a

09:11:48 10 shareholder in due course, correct?

09:11:48 11 A. Right.

09:11:50 12 Q. Would you turn to the first page

09:11:52 13 of the document? It has page one on it. It

09:11:56 14 says financial highlights.

09:11:58 15 A. Yes, uh-huh.

09:12:00 16 Q. Would you -- can I direct your

09:12:02 17 attention to the small print at the bottom, and

09:12:04 18 in the second line it says, actual results

09:12:06 19 could differ materially. Do you see that?

09:12:14 20 A. Yes.

09:12:16 21 Q. And Dr. Peerless, with this

09:12:16 22 document or any other, please take as much time

09:12:20 23 as you need to review parts of it, all of it,

09:12:22 24 whatever you need to get the appropriate

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09:14:34 1 Q. Okay. In the second paragraph in

09:14:36 2 the second line, the phrase free of material

09:14:40 3 misstatement appears. Do you see that?

09:14:42 4 MR. BURKE: Second paragraph,

09:14:42 5 second line. You might want to read that

09:14:48 6 second paragraph just to put it in perspective.

09:15:08 7 A. Yes.

09:15:08 8 Q. What does the phrase free of

09:15:10 9 material misstatement mean in that document?

09:15:12 10 MR. BURKE: Objection. No

09:15:14 11 foundation for this witness. Calls for

09:15:14 12 speculation.

09:15:16 13 A. I really don't know.

09:15:20 14 Q. Can I direct your attention to the

09:15:22 15 first line of the third paragraph and the

09:15:24 16 phrase in all material respects appears. Do

09:15:26 17 you see that?

09:15:28 18 A. Um-hmm.

09:15:28 19 Q. What does the phrase in all

09:15:30 20 material respects mean?

09:15:30 21 MR. BURKE: Objection. No

09:15:32 22 foundation. Calls for speculation.

09:15:38 23 A. I, I really don't know. I imagine

09:15:38 24 it means the -- the examination of the bank.

14

09:12:24 1 context. That's a standing instruction.

09:12:26 2 MR. BURKE: You might want to read

09:12:28 3 that paragraph then just to make sure -- see if

09:12:30 4 you understand it.

09:13:36 5 A. Yes.

09:13:38 6 Q. What does the phrase differ

09:13:38 7 materially mean as it's used in the second line

09:13:42 8 of Plaintiff's Exhibit 90 on page one?

09:13:44 9 MR. BURKE: Objection. No

09:13:46 10 foundation for this witness. Calls for

09:13:48 11 speculation. Do you know where he's --

09:13:52 12 A. Yeah. I can't answer that.

09:13:54 13 Q. Okay. Dr. Peerless, would you

09:13:56 14 turn to page 46 of this document? Dr.

09:14:18 15 Peerless, what do we find on page 46 of

09:14:20 16 Plaintiff's Exhibit 90?

09:14:22 17 A. It's an independent auditor's

09:14:24 18 report by Ernst & Young.

09:14:26 19 Q. And you're familiar with these

09:14:28 20 independent auditor reports, correct?

09:14:28 21 A. Yes.

09:14:30 22 Q. And you've seen reports like this

09:14:32 23 for 27 years, correct?

09:14:34 24 A. Right.

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09:15:46 1 Q. And specifically what with respect

09:15:48 2 to their examination of the bank?

09:15:52 3 MR. BURKE: Objection.

09:15:54 4 A. It would include everything.

09:16:00 5 Q. Dr. Peerless, are you familiar

09:16:00 6 with the concept of financial literacy?

09:16:04 7 MR. BURKE: Objection. No

09:16:04 8 foundation. Calls for speculation.

09:16:06 9 A. I don't know.

09:16:10 10 Q. Are you financially literate?

09:16:12 11 A. I think I am.

09:16:14 12 Q. And what does it mean to you to be

09:16:16 13 financially literate?

09:16:18 14 A. To understand finances.

09:16:20 15 Q. When you say "to understand

09:16:22 16 finances," are you talking about personal

09:16:24 17 finances, the finances of a small business, or

09:16:26 18 the finances of a public company, or something

09:16:30 19 else?

09:16:30 20 A. Personal.

09:16:30 21 MR. BURKE: Objection to form.

09:16:32 22 Q. Are you financially literate as

09:16:32 23 applied to the financial statements of a public

09:16:36 24 company?

17

09:16:38 1 MR. BURKE: Objection to form. No
09:16:38 2 foundation.
09:16:40 3 A. I don't know.
09:16:42 4 Q. Would you be able to read and
09:16:44 5 interpret with me Provident's financial
09:16:46 6 statements as included in this document?
09:16:48 7 MR. BURKE: Objection. No
09:16:48 8 foundation. Calls for speculation.
09:16:50 9 A. I think so.
09:16:54 10 Q. Dr. Peerless, what if any input
09:16:56 11 did you and the Board have with respect to
09:16:58 12 Plaintiff's Exhibit 90, the 2002 PFGI annual
08:17:02 13 report?
09:17:04 14 MR. BURKE: Objection. Overbroad.
09:17:04 15 A. None.
09:17:06 16 Q. None?
09:17:08 17 A. (Witness shook head.)
09:17:08 18 Q. Did you personally review this
09:17:10 19 document in draft form before it was finalized
09:17:12 20 and sent to the shareholders?
09:17:14 21 A. I -- we, we received this document
09:17:16 22 from Ernst & Young.
09:17:18 23 Q. What document specifically are you
09:17:20 24 referring to?

19

09:18:20 1 independent auditors for 27 years, during the
09:18:24 2 time you were a director?
09:18:26 3 A. I'm not sure.
09:18:28 4 Q. Do you remember any other auditors
09:18:30 5 other than Ernst & Young?
09:18:34 6 A. Right now, no.
09:18:34 7 Q. What does it mean to be an
09:18:36 8 independent auditor?
09:18:38 9 MR. BURKE: Objection. Calls for
09:18:38 10 speculation. No foundation as to this witness.
09:18:42 11 A. I think it means people that do
09:18:46 12 auditing that comes independently of the bank's
09:18:50 13 Board of Trustees.
09:18:52 14 Q. What bank Board of Trustees?
09:18:56 15 A. Provident Bank.
09:18:56 16 Q. Did you mean to say Board of
09:18:58 17 Directors?
09:18:58 18 A. Board of Directors.
09:18:58 19 Q. I think you were confusing
09:19:00 20 Provident with a non-public company.
09:19:02 21 MR. BURKE: Objection.
09:19:02 22 A. Yeah.
09:19:04 23 Q. Would you turn to page 82 of
09:19:06 24 Plaintiff's Exhibit 90, please, Dr. Peerless?

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09:17:22 1 A. Their -- pardon me, their audit.
09:17:26 2 Q. Okay. I'm talking about the
09:17:28 3 entire document, Plaintiff's Exhibit 90, the
09:17:30 4 document you have in your hand.
09:17:32 5 MR. BURKE: Is that a question?
09:17:34 6 Q. Yes. Did you review the document
09:17:36 7 in draft form before it was finalized --
09:17:38 8 A. No.
09:17:38 9 Q. -- and sent to the Provident
09:17:40 10 shareholders?
09:17:40 11 A. No.
09:17:40 12 Q. Why not?
09:17:42 13 A. Because Ernst & Young are well
09:17:44 14 recognized financial experts, and I think
09:17:52 15 there's very little that I could add to their
09:17:54 16 knowledge.
09:17:54 17 Q. What knowledge did Ernst & Young
09:17:56 18 bring to Plaintiff's Exhibit 90?
09:17:58 19 MR. BURKE: Objection. Calls for
09:18:00 20 speculation as to what they did.
09:18:04 21 A. They are a well-known financial
09:18:04 22 company that does auditing, and they're well
09:18:10 23 recognized and that's their job.
09:18:14 24 Q. And were Ernst & Young Provident's

20

09:18:24 1 In the left hand column, do you see note 26,
09:18:26 2 additional information, and beneath that, legal
09:18:30 3 matters?
09:18:30 4 A. Um-hmm.
09:18:32 5 Q. Dr. Peerless, what is -- what are
09:18:34 6 legal proceedings other than routine litigation
09:18:36 7 incidental to their business?
09:18:40 8 MR. BURKE: Objection. Calls for
09:18:44 9 speculation.
09:18:44 10 A. I don't know.
09:18:46 11 Q. Do you have an understanding as to
09:18:46 12 the litigation that brings us here today?
09:18:48 13 A. No.
09:18:50 14 Q. None at all?
09:18:50 15 A. None at all.
09:18:52 16 Q. Do you know who the plaintiffs
09:18:52 17 are?
09:18:52 18 A. No.
09:18:54 19 Q. Do you know who the defendants
09:18:54 20 are?
09:18:58 21 A. I'd imagine Provident Bank is.
09:20:00 22 Q. Why do you imagine that?
09:20:00 23 A. Because that's the reason I'm
09:20:02 24 here, I'm on the Board of Provident Bank and,

21

09:20:10 1 and I imagine that's why I'm here.
09:20:12 2 Q. Are you a defendant, Dr. Peerless?
09:20:14 3 A. No.
09:20:16 4 Q. How do you know that?
09:20:18 5 A. I wasn't -- I didn't get any
09:20:20 6 reports or any notifications from the courts or
09:20:22 7 from your office or --
09:20:24 8 Q. Are you represented by counsel
09:20:26 9 today, Dr. Peerless?
09:20:28 10 A. Yes.
09:20:30 11 Q. By whom are you represented?
09:20:32 12 A. Mr. Burke.
09:20:34 13 MR. BURKE: Yes.
09:20:36 14 Q. And who is the gentleman on Mr.
09:20:38 15 Burke's left?
09:20:40 16 MR. BURKE: Objection. How should
09:20:42 17 he know? He's not a defendant. That's a
09:20:44 18 ridiculous question.
09:20:46 19 A. I don't know.
09:20:48 20 Q. Have you ever met this gentleman
09:20:50 21 before?
09:20:52 22 A. No, I don't think so.
09:20:54 23 Q. Does he represent you?
09:20:56 24 MR. BURKE: Of course he doesn't.

23

09:21:28 1 Jim.
09:21:30 2 MR. BURKE: You know he's not a
09:21:32 3 defendant. I don't understand the logic of
09:21:34 4 this question.
09:21:36 5 MR. BRAUTIGAM: I agree. Well,
09:21:38 6 that's not important.
09:21:40 7 A. I don't know.
09:21:42 8 BY MR. BRAUTIGAM:
09:21:44 9 Q. Have you ever read the complaint?
09:21:46 10 MR. BURKE: Objection.
09:21:48 11 A. No.
09:21:50 12 Q. Have you ever read any of the
09:21:52 13 legal documents that have been filed?
09:21:54 14 A. No.
09:21:56 15 MR. BURKE: Objection. Asked and
09:21:58 16 answered.
09:22:00 17 Q. How did Mr. Burke come to
09:22:02 18 represent you today?
09:22:04 19 A. Because I think his law firm
09:22:06 20 represents the bank in this litigation.
09:22:08 21 Q. Do you believe that Mr. Burke's
09:22:10 22 representation is independent?
09:22:12 23 MR. BURKE: Objection. Calls for
09:22:14 24 speculation.

WILLIAMS & OLIVER

22

09:20:48 1 A. No. I don't know him.
09:20:50 2 Q. Do you know who the judge is in
09:20:52 3 this litigation?
09:20:54 4 MR. BURKE: Objection. He's not a
09:20:56 5 defendant.
09:20:58 6 A. No.
09:21:00 7 MR. BURKE: He's told you that and
09:21:02 8 you know that.
09:21:04 9 A. No.
09:21:06 10 Q. Do you know who the magistrate is?
09:21:08 11 A. No.
09:21:10 12 Q. Do you believe that your
09:21:12 13 interests, if any, in the litigation are the
09:21:14 14 same as those of the Provident defendants?
09:21:16 15 MR. BURKE: Objection. He's not
09:21:18 16 been named as a defendant and you know that.
09:21:20 17 A. I don't know.
09:21:22 18 Q. Do you believe that your
09:21:24 19 interests, if any, in the litigation are the
09:21:26 20 same as the OHSL directors?
09:21:28 21 MR. BURKE: Are you representing
09:21:30 22 to this witness he has an interest in this
09:21:32 23 litigation, Mr. Brautigam?
09:21:34 24 MR. BRAUTIGAM: I said "if any,"

24

09:22:02 1 A. I don't know what you're talking
09:22:04 2 about.
09:22:06 3 Q. Well, we talked about how the
09:22:08 4 auditors are expected to be independent. Do
09:22:10 5 you remember that testimony?
09:22:12 6 MR. BURKE: Objection. Calls for
09:22:14 7 speculation.
09:22:16 8 A. Yeah.
09:22:18 9 Q. Do you believe that Mr. Burke and
09:22:20 10 his firm are providing independent
09:22:22 11 representation to you?
09:22:24 12 A. I don't understand the question.
09:22:26 13 Q. Okay. Do you know if the law firm
09:22:28 14 of KMK and one of its partners have ever been
09:22:30 15 named as defendants in the litigation?
09:22:32 16 A. I don't know.
09:22:34 17 Q. Do you know if the law firm of KMK
09:22:36 18 will be providing witnesses in the case?
09:22:38 19 A. I don't know.
09:22:40 20 Q. Would these be important factors
09:22:42 21 to know in assessing whether or not KMK is able
09:22:44 22 to provide --
09:22:46 23 MR. BURKE: Objection.
09:22:48 24 Q. -- you independent representation?

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SIDNEY PEERLESS, M.D.

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09:22:42 1 MR. BURKE: Calls for complete
09:22:42 2 speculation.
09:22:44 3 A. I don't know.
09:22:44 4 Q. Dr. Peerless, what if anything did
09:22:46 5 you do to prepare for this deposition?
09:22:48 6 A. Nothing.
09:22:48 7 Q. Do you consider this deposition to
09:22:50 8 be important?
09:22:52 9 A. I don't know what it's all about.
09:22:54 10 Q. Did you ever make any attempt to
09:22:56 11 find out?
09:22:58 12 A. No.
09:22:58 13 Q. Dr. Peerless, was this litigation
09:23:00 14 ever discussed at Provident Board meetings?
09:23:04 15 A. Very superficially.
09:23:06 16 Q. Can you tell me what was said?
09:23:08 17 A. It was mentioned.
09:23:14 18 Q. Did you meet with counsel in
09:23:16 19 preparation for today's deposition?
09:23:18 20 A. Yes.
09:23:20 21 Q. Approximately how long did that
09:23:22 22 meeting last?
09:23:24 23 A. Half an hour or 45 minutes.
09:23:26 24 Q. Was that earlier today or

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09:24:44 1 A. Yes.
09:24:46 2 Q. Tell me about these discussions.
09:24:48 3 A. The discussion was that they --
09:24:50 4 Provident was interested in purchasing them and
09:24:52 5 they were interested in being purchased. And
09:24:54 6 that it was unanimous by their Board and our
09:24:56 7 Board that this purchase agreement go through.
09:25:04 8 And that was it.
09:25:08 9 Q. Okay. You used the word
09:25:08 10 unanimous, and you referred to it as being
09:25:12 11 unanimous by their Board and our Board. Do you
09:25:14 12 remember that?
09:25:14 13 A. Unanimous, I can only talk about
09:25:16 14 our Board.
09:25:16 15 Q. Okay. Let's talk about what it
09:25:18 16 means when the Provident Board of Directors
09:25:20 17 votes on something unanimously. Did the
09:25:24 18 Provident Board of Directors vote unanimously
09:25:26 19 to acquire OHSL in 1999?
09:25:28 20 A. Yes.
09:25:28 21 Q. And did that mean that all of the
09:25:32 22 Provident directors, all seven of them, voted
09:25:34 23 affirmatively?
09:25:36 24 A. I think so.

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09:23:24 1 yesterday?
09:23:24 2 A. Yesterday.
09:23:28 3 Q. And you looked at no documents in
09:23:30 4 that meeting, correct?
09:23:30 5 A. Right.
09:23:42 6 Q. Do you know if the law firm of KMK
09:23:44 7 has ever been disqualified in this litigation?
09:23:48 8 MR. BURKE: Objection. Calls for
09:23:48 9 speculation.
09:23:50 10 A. I don't know.
09:23:54 11 Q. Dr. Peerless, let me direct your
09:23:58 12 attention to Defendant's Exhibit 1. This is
09:23:58 13 the proxy material and the registration
09:24:00 14 statement.
09:24:02 15 A. Here?
09:24:02 16 Q. Yes. Dr. Peerless, have you seen
09:24:26 17 Defendant's Exhibit 1 before?
09:24:28 18 A. No.
09:24:28 19 Q. Was this document in draft form
09:24:32 20 ever presented to the OHSL -- excuse me,
09:24:36 21 Provident Board?
09:24:36 22 A. No. Not that I know of.
09:24:40 23 Q. Do you remember discussing merging
09:24:42 24 with OHSL in 1999?

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09:25:36 1 Q. No one abstained, correct?
09:25:38 2 A. Not that I can -- not that I can
09:25:40 3 think of.
09:25:42 4 Q. All seven of the directors were in
09:25:44 5 the room at the time, correct?
09:25:44 6 A. Right.
09:25:44 7 Q. And that was recorded as a
09:25:46 8 unanimous vote on the books and records of
09:25:50 9 Provident, correct?
09:25:50 10 MR. BURKE: Objection. Calls for
09:25:52 11 speculation. You may answer.
09:25:52 12 A. I think so.
09:25:54 13 Q. And that's because that's what
09:25:56 14 your understanding of the word unanimous means,
09:25:58 15 correct?
09:26:00 16 MR. BURKE: Objection. Calls for
09:26:00 17 speculation. He's talking about Provident.
09:26:02 18 A. Yes. I'm talking about Provident.
09:26:04 19 Q. Right, exactly, we're talking
09:26:06 20 about Provident.
09:26:06 21 MR. BURKE: Right.
09:26:08 22 Q. Okay. And that's the way things
09:26:10 23 have been done at Provident during the 27 years
09:26:14 24 that you were a director, correct?

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09:26:14 1 MR. BURKE: Objection. You may
09:26:16 2 answer.
09:26:18 3 A. I don't understand the question.
09:26:18 4 Q. In other words, the interpretation
09:26:20 5 of the word unanimous did not change with
09:26:24 6 respect to Provident Board meetings during the
09:26:26 7 entire 27 years that you were a director,
09:26:28 8 correct?
09:26:28 9 MR. BURKE: Objection. Vague,
09:26:30 10 overbroad.
09:26:30 11 A. I don't -- I don't understand the
09:26:32 12 question.
09:26:34 13 Q. Okay. When you first went on the
09:26:36 14 Provident Board 27 years ago, unanimous meant
09:26:38 15 that all of the directors in the room voted the
09:26:42 16 same way, correct?
09:26:44 17 MR. BURKE: Objection.
09:26:46 18 A. That was my interpretation of
09:26:46 19 unanimous.
09:26:48 20 Q. And if a director wasn't there,
09:26:50 21 the vote would be recorded as director A was
09:26:54 22 just not present, correct?
09:26:56 23 MR. BURKE: Objection. Calls for
09:26:56 24 speculation, overbroad.

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09:27:54 1 Q. And that's Mr. Hoverson?
09:27:54 2 A. Hoverson.
09:27:56 3 Q. Mr. Hoverson was never formally
09:27:58 4 given the title of CEO; is that correct?
09:28:00 5 A. I don't know.
09:28:02 6 Q. And when Mr. Hoverson told the
09:28:04 7 Board, the Provident Board, that the OHSL Board
09:28:08 8 had voted unanimously to merge with Provident,
09:28:12 9 did you interpret that to mean that all of the
09:28:14 10 OHSL directors had voted affirmatively in favor
09:28:18 11 of the merger?
09:28:20 12 MR. BURKE: Objection. Calls for
09:28:22 13 speculation.
09:28:22 14 A. I can't -- I can't say
09:28:24 15 specifically that he said unanimously. I think
09:28:26 16 he said that they were in favor of it.
09:28:30 17 Q. Dr. Peerless, what if any
09:28:32 18 responsibility does the Provident Board have
09:28:34 19 for Defendant's Exhibit 1?
09:28:38 20 A. That this was brought up to the
09:28:42 21 Board of the financial company, that they voted
09:28:46 22 for purchasing their bank and we confirmed it.
09:28:52 23 Q. I'm talking specifically about
09:28:54 24 that document in front of you, Defendant's

09:27:02 1 A. I don't know.
09:27:04 2 Q. Would Provident record a vote as
09:27:06 3 unanimous if one of the directors wasn't there?
09:27:10 4 MR. BURKE: Objection. Asked and
09:27:12 5 answered.
09:27:12 6 A. It could be that they could.
09:27:14 7 Q. Would they mention that one of the
09:27:16 8 directors wasn't there?
09:27:16 9 A. That would be -- would have been
09:27:18 10 mentioned at the beginning of the meeting.
09:27:20 11 Q. And it would also be reflected in
09:27:24 12 the minutes, correct?
09:27:24 13 A. Yes.
09:27:30 14 Q. You also testified, Dr. Peerless,
09:27:32 15 that you believed that the vote of the OHSL
09:27:36 16 Board to merge with Provident was unanimous.
09:27:40 17 Do you remember that testimony at all?
09:27:42 18 MR. BURKE: Objection.
09:27:42 19 Mischaracterizes the prior testimony.
09:27:44 20 A. That's what I heard.
09:27:46 21 Q. Where did you hear that?
09:27:46 22 A. At the Board meeting.
09:27:48 23 Q. Who said that?
09:27:48 24 A. The president of the bank, CEO.

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09:28:58 1 Exhibit 1. Who does that document come from?
09:29:00 2 MR. BURKE: Objection. Calls for
09:29:02 3 speculation.
09:29:04 4 A. I imagine it comes from OHSL
09:29:06 5 Financial.
09:29:06 6 Q. Do you believe that it comes in
09:29:06 7 any sense from Provident and the Provident
09:29:10 8 Board?
09:29:10 9 MR. BURKE: Objection. Calls for
09:29:10 10 speculation. No foundation.
09:29:14 11 A. I don't think so.
09:29:14 12 Q. Why not?
09:29:14 13 A. Because they didn't write it.
09:29:16 14 Q. Who did write the document?
09:29:18 15 A. Norbert Brinker.
09:29:22 16 Q. Is it your understanding that
09:29:22 17 Norbert Brinker wrote the entire document?
09:29:24 18 MR. BURKE: Objection.
09:29:26 19 A. I don't know. I don't know.
09:29:26 20 It's -- I'm not at all associated with them. I
09:29:32 21 don't even know who they are.
09:29:36 22 Q. Do you know who Norbert Brinker
09:29:38 23 is?
09:29:38 24 A. No.

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09:29:40 1 Q. Is this document in any sense a
09:29:44 2 joint document from OHSL and Provident?
09:29:46 3 A. No.
09:29:46 4 MR. BURKE: Objection. No
09:29:46 5 foundation. Asked and answered. You may
09:29:46 6 answer.
09:29:50 7 Q. So it's your understanding that
09:29:50 8 this document comes exclusively from OHSL?
09:29:54 9 A. Yes.
09:29:54 10 Q. Did Provident provide any
09:29:56 11 information that's included in Defendant's
09:29:56 12 Exhibit 1?
09:29:58 13 A. I don't know, but I don't think
09:30:00 14 so.
09:30:10 15 Q. Dr. Peerless, are you familiar
09:30:12 16 generally with mergers and acquisitions?
09:30:14 17 MR. BURKE: Objection. No
09:30:16 18 foundation.
09:30:16 19 A. In a certain extent.
09:30:18 20 Q. How many mergers and acquisitions
09:30:20 21 has Provident had during the 27 years you
09:30:22 22 served as a director, approximately?
09:30:24 23 A. I'd say four or five.
09:30:32 24 Q. Are you familiar with GAAP?

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09:31:30 1 Exhibit 1 told the truth, the whole truth, and
09:31:32 2 nothing but the truth about the merger?
09:31:34 3 A. I can't answer that.
09:31:36 4 Q. Why not?
09:31:36 5 A. Because I don't know.
09:31:40 6 Q. Before today, have you ever seen
09:31:42 7 Defendant's Exhibit 1?
09:31:44 8 MR. BURKE: Objection. Asked and
09:31:44 9 answered.
09:31:44 10 A. No.
09:31:54 11 Q. Dr. Peerless, please describe your
09:31:56 12 understanding of the terms of the
09:31:58 13 OHSL-Provident merger.
09:32:00 14 MR. BURKE: Objection,
09:32:02 15 speculation. No foundation.
09:32:02 16 A. It -- I assumed the -- Provident
09:32:08 17 was interested in buying them and they were
09:32:10 18 interested in being sold. And they got
09:32:12 19 together on terms, both Boards approved the
09:32:16 20 terms, and that's what they did.
09:32:20 21 Q. What was the currency used for the
09:32:22 22 transaction, if you will?
09:32:24 23 A. I'd imagine stock transfer.
09:32:28 24 Q. What type of stock?

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09:30:36 1 A. Clothing store?
09:30:36 2 Q. No. G A A P.
09:30:40 3 A. No.
09:30:42 4 Q. Are you familiar with GAAS,
09:30:44 5 capital G A A S?
09:30:46 6 A. No.
09:30:50 7 Q. What is the purpose of proxy
09:30:52 8 materials?
09:30:54 9 MR. BURKE: Objection. Calls for
09:30:54 10 legal conclusion, speculation.
09:30:58 11 A. Proxy material, something for
09:31:00 12 shareholders to read.
09:31:02 13 Q. And why were proxy materials
09:31:06 14 created in this case?
09:31:08 15 MR. BURKE: Objection. You may
09:31:08 16 answer.
09:31:10 17 A. I don't know, but I would assume
09:31:12 18 to give information to the people involved.
09:31:14 19 Q. And what type of information was
09:31:16 20 being communicated through the proxy materials?
09:31:20 21 MR. BURKE: Objection. Overbroad.
09:31:22 22 A. The details of the -- of the
09:31:26 23 venture.
09:31:28 24 Q. Do you believe that Defendant's

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09:32:28 1 A. Provident stock for OHSL stock.
09:32:32 2 Q. Was this existing stock or was it
09:32:32 3 newly-issued stock?
09:32:34 4 A. I don't know.
09:32:36 5 Q. Are you familiar with something
09:32:36 6 known as a registration statement?
09:32:38 7 A. No.
09:32:38 8 Q. Have you ever signed a
09:32:40 9 registration statement with respect to the
09:32:42 10 OHSL-Provident merger?
09:32:44 11 A. No.
09:32:44 12 Q. So you wouldn't know what, if
09:32:46 13 anything, was being registered, correct?
09:32:46 14 A. No.
09:32:52 15 Q. Are you familiar with the phrase
09:32:52 16 due diligence?
09:32:54 17 A. Yes.
09:32:54 18 Q. What does due diligence mean?
09:32:56 19 A. It means that the documents have
09:33:00 20 undergone scrutiny from the standpoint of, of
09:33:04 21 legality.
09:33:06 22 Q. Any other standpoint?
09:33:06 23 A. No.
09:33:08 24 Q. How about that the documents are

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09:33:12 1 correct from a financial standpoint?
09:33:14 2 MR. BURKE: How about -- objection
09:33:16 3 to form.
09:33:16 4 A. That's understood.
09:33:18 5 Q. Okay. Why is that understood?
09:33:20 6 A. Because they should be correct.
09:33:22 7 Q. Okay. Are you familiar with the
09:33:22 8 term restatement?
09:33:24 9 A. Yes.
09:33:26 10 Q. What is a restatement?
09:33:28 11 A. A restatement is when there is --
09:33:30 12 they find that there's a mistake or an omission
09:33:32 13 and they are restated correctly.
09:33:38 14 Q. Are you familiar with the term
09:33:40 15 fairness opinion?
09:33:42 16 A. No.
09:33:42 17 Q. Are you familiar with the term
09:33:44 18 artificial inflation?
09:33:46 19 A. No.
09:33:48 20 MR. BURKE: Objection.
09:33:46 21 Q. Are you familiar with the term
09:33:48 22 materially overvalued?
09:33:50 23 A. Yes.
09:33:50 24 Q. What does it -- the phrase

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09:34:30 1 balance sheet transactions?
09:34:32 2 A. I don't know.
09:34:32 3 Q. Are you familiar with the
09:34:34 4 Sarbanes-Oxley Act?
09:34:36 5 A. Yes.
09:34:36 6 Q. What is the Sarbanes-Oxley Act?
09:34:40 7 MR. BURKE: Objection. Calls for
09:34:40 8 a legal conclusion. You may answer.
09:34:42 9 A. My idea was that the financial
09:34:44 10 statements be more detailed.
09:34:50 11 Q. And did your job as a director
09:34:50 12 change in any way as a result of the
09:34:54 13 Sarbanes-Oxley Act?
09:34:56 14 MR. BURKE: Objection. Calls for
09:34:58 15 a legal conclusion.
09:34:58 16 A. No.
09:34:58 17 Q. Are you familiar with the term
09:35:00 18 outside director?
09:35:00 19 A. Yes.
09:35:00 20 Q. What is an outside director?
09:35:02 21 A. An outside director is a director
09:35:04 22 in the bank that is not an employee of the
09:35:06 23 bank.
09:35:08 24 Q. Are you familiar with an inside

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09:33:52 1 materially overvalued mean?
09:33:54 2 A. That they've overvalued the
09:33:56 3 situation. In other words, they put a higher
09:33:58 4 price on than should have.
09:34:00 5 Q. And you said "they" in your
09:34:02 6 previous answer. To whom were you referring?
09:34:06 7 MR. BURKE: Objection. Vague, no
09:34:06 8 foundation.
09:34:08 9 A. To the people involved.
09:34:08 10 Q. And what people are involved in
09:34:10 11 setting a price for a stock?
09:34:10 12 MR. BURKE: Objection. Calls for
09:34:12 13 speculation. No foundation.
09:34:14 14 A. I really don't know.
09:34:16 15 Q. Are you familiar with
09:34:20 16 off-the-books transactions?
09:34:20 17 A. No.
09:34:22 18 Q. Are you familiar with off balance
09:34:22 19 sheet transactions?
09:34:24 20 A. No.
09:34:24 21 Q. Did Provident engage in
09:34:26 22 off-the-books transactions?
09:34:28 23 A. I -- I don't know.
09:34:30 24 Q. Did Provident engage in off

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09:35:08 1 director?
09:35:10 2 A. Yes.
09:35:10 3 Q. What is an inside director?
09:35:12 4 A. An inside director is an employee
09:35:14 5 of the bank who is on the Board or -- yeah, on
09:35:16 6 the Board.
09:35:18 7 Q. Did you do business with any
09:35:20 8 Provident Board members?
09:35:20 9 A. No.
09:35:22 10 Q. Did you do business to any
09:35:24 11 substantial degree with any members of the
09:35:26 12 Lindner family?
09:35:28 13 A. No.
09:35:28 14 Q. And that's true for the past 27
09:35:30 15 years?
09:35:30 16 A. Past 27 years. I've avoided being
09:35:32 17 in any transactions with them. I haven't
09:35:36 18 bought their stock or anything like that.
09:35:40 19 Q. When you say "bought their stock,"
09:35:40 20 what entity are you referring to?
09:35:42 21 A. American Financial.
09:35:44 22 Q. Are you familiar with the phrase
09:35:46 23 conflict of interest?
09:35:48 24 A. Yes.

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09:35:50 1 Q. What is a conflict of interest?
09:35:52 2 MR. BURKE: Objection. Vague,
09:35:52 3 overbroad.
09:35:54 4 A. I understand it as being involved
09:35:56 5 in something where your actions have a material
09:36:02 6 effect on the subject.
09:36:08 7 Q. Did you say material effect?
09:36:10 8 A. Yes.
09:36:10 9 Q. What did you mean by that?
09:36:12 10 A. Well, where your doing something
09:36:14 11 will either inflate or deflate the price.
09:36:22 12 Q. Price of what?
09:36:24 13 MR. BURKE: Objection.
09:36:24 14 A. Stock.
09:36:26 15 Q. Are you familiar with the term
09:36:28 16 takeover premium?
09:36:28 17 A. No.
09:36:30 18 Q. Was there a takeover premium used
09:36:32 19 in the OHSL-Provident merger?
09:36:36 20 MR. BURKE: Objection. Calls for
09:36:36 21 speculation.
09:36:36 22 A. I, I don't know.
09:36:38 23 Q. You're familiar with the
09:36:38 24 Provident-National City merger, correct?

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09:37:24 1 providing the fairness opinion be independent?
09:37:26 2 MR. BURKE: Objection. Calls for
09:37:28 3 speculation.
09:37:28 4 A. I really don't know.
09:37:28 5 Q. Provident paid UBS Securities to
09:37:32 6 perform a fairness opinion; is that correct?
09:37:36 7 A. I don't know.
09:37:42 8 Q. Dr. Peerless, would you take
09:37:44 9 Exhibit 1, which you have in front of you, and
09:37:48 10 turn to the last couple of pages of it, Annex
09:37:52 11 C? It's a fairness opinion. There you go.
09:37:58 12 Why don't you just review that briefly and I'll
09:38:00 13 have some questions on it.
09:38:02 14 MR. BURKE: Do you want him to
09:38:02 15 read the whole opinion?
09:38:04 16 Q. Well, no, he doesn't have to. My
09:38:06 17 questions will go to page three. Dr. Peerless,
09:39:58 18 what type of an entity typically issues
09:40:02 19 fairness opinions?
09:40:02 20 MR. BURKE: Objection. Asked and
09:40:04 21 answered. No foundation. Calls for
09:40:04 22 speculation.
09:40:06 23 A. What was that again?
09:40:06 24 Q. What type of entity typically

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09:36:40 1 A. Yes.
09:36:42 2 Q. Was there a takeover premium used?
09:36:44 3 MR. BURKE: Objection. No
09:36:44 4 foundation.
09:36:46 5 A. I don't know.
09:36:48 6 Q. Dr. Peerless, did you use --
09:36:52 7 excuse me. Did you read the proxy materials
09:36:54 8 that were used for the Provident-National City
09:36:58 9 merger?
09:36:58 10 A. Yes.
09:37:00 11 Q. Did they include a fairness
09:37:00 12 opinion?
09:37:02 13 A. Yes.
09:37:02 14 Q. What was the purpose of including
09:37:04 15 the fairness opinion in the proxy materials for
09:37:08 16 the Provident-National City merger?
09:37:08 17 A. To make sure the stockholders were
09:37:12 18 satisfied.
09:37:14 19 Q. And how does one go about
09:37:18 20 obtaining a fairness opinion?
09:37:20 21 MR. BURKE: Objection. No
09:37:20 22 foundation.
09:37:20 23 A. I don't know.
09:37:22 24 Q. Is it important that the entity

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09:40:08 1 issues fairness opinions?
09:40:10 2 MR. BURKE: Same objection.
09:40:12 3 A. I don't know.
09:40:12 4 Q. Do you know if McDonald
09:40:12 5 Investments is an investment banking firm?
09:40:16 6 A. Yes.
09:40:16 7 Q. And does it appear that Annex C to
09:40:18 8 Defendant's Exhibit 1 appears to be a fairness
09:40:22 9 opinion?
09:40:22 10 MR. BURKE: Objection. You may
09:40:22 11 answer.
09:40:24 12 A. I think so.
09:40:26 13 Q. And when an investment banking
09:40:28 14 firm undertakes to issue a fairness opinion,
09:40:32 15 they do not perform an audit, correct?
09:40:34 16 MR. BURKE: Objection. Calls for
09:40:36 17 speculation. No foundation.
09:40:36 18 A. I don't know.
09:40:38 19 Q. Okay.
09:40:38 20 A. I have no idea.
09:40:38 21 Q. Would you read to yourself the
09:40:40 22 first sentence of the first full paragraph on
09:40:44 23 page three, please? In our review and
09:40:52 24 analysis.

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09:42:02 1 A. Um-hmm.
09:42:04 2 Q. Dr. Peerless, let me direct your
09:42:06 3 attention to page six of the proxy materials.
09:42:08 4 I wanted to show you something.
09:42:08 5 MR. BURKE: So you don't want to
09:42:10 6 ask him any questions over what he just read?
09:42:12 7 MR. BRAUTIGAM: I want him to go
09:42:12 8 to page six and then I'll come back here.
09:42:16 9 MR. BURKE: Okay. I think we have
09:42:18 10 to change it around here.
09:42:20 11 THE WITNESS: Okay.
09:42:22 12 BY MR. BRAUTIGAM:
09:42:22 13 Q. Dr. Peerless, you have page six of
09:42:26 14 Defendant's Exhibit 1 in front of you, correct?
09:42:28 15 A. Yes, I do.
09:42:30 16 Q. Does that page appear to contain
09:42:30 17 Provident financial information?
09:42:32 18 MR. BURKE: Objection. No
09:42:32 19 foundation. You may answer it.
09:42:38 20 A. Yes.
09:42:38 21 Q. And you said earlier that you did
09:42:40 22 not believe that Defendant's Exhibit 1
09:42:42 23 contained any information from Provident, but
09:42:44 24 now we know that it contains at least some,

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09:43:34 1 Q. Dr. Peerless, I'm going to read
09:43:36 2 the first sentence of that paragraph into the
09:43:36 3 record, In our review and analysis, and in
09:43:40 4 arriving at our opinion, we have assumed and
09:43:44 5 relied upon the accuracy and completeness of
09:43:48 6 all the financial and other information viewed
09:43:52 7 by us and have relied upon the accuracy and
09:43:54 8 completeness of the representations, warranties
09:43:58 9 and covenants of OHSI and PFGI contained in the
09:44:02 10 agreement. Do you see that?
09:44:04 11 A. Yeah.
09:44:04 12 Q. Dr. Peerless, we now know that the
09:44:08 13 information that Provident provided from a
09:44:10 14 financial point of view was not accurate,
09:44:12 15 correct?
09:44:14 16 MR. BURKE: Objection. Calls for
09:44:14 17 speculation.
09:44:14 18 A. I --
09:44:16 19 MR. BURKE: Assumes facts not in
09:44:18 20 evidence.
09:44:18 21 A. I don't know.
09:44:20 22 Q. We now know that the financial
09:44:22 23 information contained in Defendant's Exhibit 1
09:44:26 24 was not complete, correct?

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09:42:48 1 correct?
09:42:48 2 MR. BURKE: Objection.
09:42:50 3 Mischaracterizes the prior testimony.
09:42:52 4 A. I really don't know. This is
09:42:52 5 becoming too complicated to tie these things
09:42:56 6 together.
09:42:56 7 Q. Well, page six is part of the
09:42:58 8 overall document, correct?
09:43:00 9 A. Yeah, that's right.
09:43:00 10 Q. And it appears to contain
09:43:02 11 Provident financial information; is that
09:43:04 12 correct?
09:43:04 13 MR. BURKE: Objection. Asked and
09:43:06 14 answered. You may answer it again.
09:43:06 15 A. Yes.
09:43:06 16 Q. And this financial information
09:43:08 17 appears to go back to 1994, correct?
09:43:12 18 MR. BURKE: Objection. No
09:43:12 19 foundation, speculation. You may answer.
09:43:14 20 Q. The extreme right.
09:43:16 21 A. Yes.
09:43:18 22 Q. Okay. Now, let's go back to page
09:43:20 23 three of the fairness opinion at the back.
09:43:22 24 A. Okay.

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09:44:28 1 MR. BURKE: Objection. Same
09:44:28 2 objection.
09:44:28 3 A. I don't know.
09:44:30 4 Q. Okay. Dr. Peerless, let's talk
09:44:32 5 about the 2003 restatements. You're familiar
09:44:36 6 with those, correct?
09:44:36 7 A. Yes.
09:44:36 8 Q. Why did Provident restate on March
09:44:40 9 5th, 2003, and then again on April 15th, 2003?
09:44:44 10 MR. BURKE: Objection. No
09:44:44 11 foundation.
09:44:46 12 A. I think there was some difference
09:44:48 13 of opinion as to car loans, automobile loans,
09:44:54 14 and I think that was the reason.
09:44:58 15 Q. And what were the varying points
09:45:00 16 of view with respect to these differences of
09:45:02 17 opinion?
09:45:04 18 MR. BURKE: Objection. Lack of
09:45:06 19 foundation.
09:45:10 20 A. I really don't know.
09:45:12 21 Q. Dr. Peerless, are all restatements
09:45:14 22 by definition material?
09:45:16 23 MR. BURKE: Objection. Calls for
09:45:16 24 speculation.

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09:45:16 1 A. I have no idea.
 09:45:18 2 Q. Have you ever heard of a public
 09:45:20 3 company issuing a restatement for a nonmaterial
 09:45:24 4 reason?
 09:45:24 5 MR. BURKE: Objection. Calls for
 09:45:24 6 speculation.
 09:45:26 7 A. I don't understand.
 09:45:28 8 Q. You don't understand the question?
 09:45:30 9 A. No.
 09:45:30 10 MR. BURKE: That's exactly what he
 09:45:30 11 said.
 09:45:32 12 Q. Let me see if I can rephrase it.
 09:45:36 13 Did Provident restate its financials in 2003
 09:45:40 14 because the previous financials were materially
 09:45:42 15 misstated?
 09:45:42 16 MR. BURKE: Objection. Calls for
 09:45:44 17 speculation. No foundation.
 09:45:46 18 A. I, I don't know.
 09:45:48 19 Q. Was Provident required to issue
 09:45:52 20 the March and April 2003 restatements?
 09:45:54 21 MR. BURKE: Same objection.
 09:45:54 22 A. I don't know.
 09:45:56 23 MR. BURKE: No foundation.
 09:45:56 24 A. Don't know.

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09:46:54 1 Q. And how did the model work?
 09:46:56 2 A. I don't know.
 09:46:58 3 Q. Who was responsible for the model?
 09:47:00 4 A. I have no idea.
 09:47:00 5 Q. Did Ernst & Young have any input
 09:47:04 6 into setting up the model?
 09:47:06 7 MR. BURKE: Objection. Calls for
 09:47:08 8 speculation.
 09:47:08 9 A. I don't know.
 09:47:08 10 Q. If they did, would that compromise
 09:47:08 11 their independence?
 09:47:10 12 MR. BURKE: Objection. Calls for
 09:47:12 13 speculation.
 09:47:12 14 A. I have no idea.
 09:47:24 15 Q. Dr. Peerless, do you believe that
 09:47:26 16 an OHSL shareholder is entitled to rely on
 09:47:30 17 every word and every number that's contained in
 09:47:34 18 Defendant's Exhibit 1?
 09:47:34 19 MR. BURKE: Objection. Calls for
 09:47:38 20 speculation. No foundation.
 09:47:38 21 A. I have no idea.
 09:47:40 22 Q. Do you believe that any of the
 09:47:40 23 financial or other information that Provident
 09:47:44 24 provided was materially misstated?

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09:45:58 1 Q. Why did Provident restate in 2003?
 09:46:02 2 MR. BURKE: Objection. Asked and
 09:46:02 3 answered. You may answer that again.
 09:46:04 4 A. I really don't know.
 09:46:10 5 Q. Do you know what RVI is?
 09:46:14 6 A. (Witness shook head.)
 09:46:14 7 Q. You have to answer audibly, Dr.
 09:46:16 8 Peerless.
 09:46:16 9 A. No.
 09:46:18 10 Q. Do you know what direct finance
 09:46:20 11 leases are?
 09:46:22 12 A. No.
 09:46:22 13 Q. Do you know what operating leases
 09:46:24 14 are?
 09:46:24 15 A. No.
 09:46:26 16 Q. Dr. Peerless, have you heard of
 09:46:28 17 something referred to as the model as it
 09:46:32 18 applies to the 2003 restatements?
 09:46:34 19 A. I've heard of it.
 09:46:36 20 Q. What is your understanding of the
 09:46:38 21 model as it applies to auto leases at
 09:46:40 22 Provident?
 09:46:42 23 A. A model is a standard that is --
 09:46:50 24 that is established in leasing autos.

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09:47:46 1 MR. BURKE: Objection. Asked and
 09:47:46 2 answered.
 09:47:48 3 A. I don't think so.
 09:47:48 4 Q. What's the basis for that?
 09:47:50 5 A. Because we're not used to
 09:47:52 6 misstating things.
 09:48:04 7 Q. Dr. Peerless, you don't deny that
 09:48:06 8 Provident's financials were incorrect going
 09:48:08 9 back to 1994?
 09:48:10 10 A. I don't know.
 09:48:12 11 MR. BURKE: Objection.
 09:48:12 12 A. I, I really don't know.
 09:48:18 13 Q. Provident issued two restatements
 09:48:20 14 in 2003, correct?
 09:48:22 15 MR. BURKE: Objection.
 09:48:22 16 A. Yes.
 09:48:22 17 Q. What information was Provident
 09:48:24 18 attempting to communicate to the investing
 09:48:26 19 public with those restatements?
 09:48:28 20 MR. BURKE: Objection.
 09:48:28 21 A. I have no idea.
 09:48:36 22 Q. Okay. Dr. Peerless, would you
 09:48:38 23 turn to the first page of Defendant's Exhibit
 09:48:42 24 1? Would you read the paragraph that begins,

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09:48:44 1 Your Board of Directors unanimously approved,
09:48:48 2 to yourself, please?
09:48:50 3 MR. BURKE: Where is this --
09:48:52 4 A. Your Board of Directors
09:48:52 5 unanimously approved the acquisition and
09:48:54 6 believes that it is in the best interest of
09:48:58 7 OHSL stockholders. The Board unanimously
09:49:02 8 recommends and advises that you approve the
09:49:04 9 acquisition at the special meeting so that the
09:49:06 10 transaction may be completed.
09:49:10 11 Q. Okay. Dr. Peerless, let's focus
09:49:12 12 on the first sentence. Do you believe that
09:49:14 13 that first sentence has two components, the
09:49:18 14 first being unanimous approval and the second
09:49:20 15 being that the transaction is in the best
09:49:24 16 interest of OHSL shareholders?
09:49:28 17 MR. BURKE: Objection. Calls for
09:49:28 18 speculation.
09:49:28 19 A. I don't know. I didn't write
09:49:28 20 this.
09:49:30 21 Q. Okay. But you can interpret it,
09:49:32 22 correct?
09:49:32 23 MR. BURKE: Objection.
09:49:32 24 A. I still don't know.

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09:50:28 1 MR. BURKE: Objection. No
09:50:28 2 relevance. Calls for speculation as to that.
09:50:32 3 Asked and answered also.
09:50:34 4 A. Mine would be that the people that
09:50:36 5 were present at that meeting voted unanimously
09:50:42 6 to accept the merger.
09:50:46 7 Q. And do you have any reason to
09:50:48 8 believe that the OHSL Board had a separate
09:50:50 9 definition?
09:50:52 10 MR. BURKE: Objection. Calls for
09:50:52 11 speculation.
09:50:54 12 A. I have no idea.
09:50:54 13 Q. Do you believe that the definition
09:50:58 14 that you just gave is in common usage in the
09:50:58 15 United States?
09:51:00 16 A. I --
09:51:00 17 MR. BURKE: Objection. Calls for
09:51:00 18 speculation.
09:51:02 19 A. I don't know. I don't know.
09:51:04 20 Q. Dr. Peerless, do you believe that
09:51:06 21 it's important for Defendant's Exhibit 1 to be
09:51:08 22 truthful?
09:51:08 23 MR. BURKE: Objection. Calls for
09:51:10 24 speculation.

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09:48:34 1 Q. Okay.
09:49:34 2 MR. BURKE: No foundation.
09:49:36 3 A. I don't know the man that wrote it
09:49:38 4 and I don't know. What can I say?
09:49:40 5 Q. Just for the record, Mr. Brinker
09:49:42 6 denies writing this, so that's -- I just wanted
09:49:44 7 to make that representation to you.
09:49:46 8 Dr. Peerless, without knowing the
09:49:50 9 man who wrote it or the woman who wrote it, can
09:49:58 10 you make a determination as to whether or not
09:49:58 11 that sentence includes two concepts?
09:50:00 12 MR. BURKE: Objection. Asked and
09:50:02 13 answered.
09:50:02 14 A. I, I -- I can't.
09:50:04 15 Q. When it says, Your Board of
09:50:06 16 Directors unanimously approved the acquisition,
09:50:10 17 do you interpret that to mean that all of the
09:50:12 18 OHSL directors voted in favor of the merger?
09:50:16 19 MR. BURKE: Objection. No
09:50:16 20 foundation. Calls for speculation.
09:50:18 21 A. No. I -- it all depends upon what
09:50:22 22 they -- the definition of unanimously is.
09:50:26 23 Q. Okay. What is your definition of
09:50:26 24 unanimously?

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09:51:12 1 A. I, I would assume that all
09:51:14 2 statements should be truthful.
09:51:20 3 Q. And it would be important for the
09:51:22 4 information contained in Defendant's Exhibit 1
09:51:24 5 to be truthful, correct?
09:51:26 6 MR. BURKE: Objection. Calls for
09:51:28 7 speculation.
09:51:28 8 A. Yes.
09:51:28 9 Q. Dr. Peerless, let me represent to
09:51:30 10 you that when the OHSL Board voted on August
09:51:32 11 2nd, 1999, there were seven directors in the
09:51:34 12 room. Are you with me so far?
09:51:36 13 MR. BURKE: Objection. Calls for
09:51:38 14 speculation. No foundation.
09:51:38 15 A. Yes.
09:51:40 16 Q. Okay. Let me further represent to
09:51:42 17 you that only five of the seven directors voted
09:51:46 18 in favor of the merger.
09:51:48 19 MR. BURKE: Objection. Calls for
09:51:48 20 speculation.
09:51:50 21 Q. Are you with me?
09:51:52 22 MR. BURKE: Incomplete
09:51:52 23 hypothetical. You may answer.
09:51:56 24 A. Yes.

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09:51:56 1 Q. Do you still believe that the vote
09:51:58 2 by the OHSL Board was unanimous as you just
09:52:00 3 defined the term?

09:52:02 4 MR. BURKE: Objection. Calls for
09:52:05 5 speculation.

09:52:06 6 A. I wasn't there. I wasn't there so
09:52:04 7 I don't know.

09:52:04 8 Q. I understand you weren't there,
09:52:06 9 Dr. Peerless. In certain circumstances in a
09:52:08 10 legal proceeding, I'm entitled to make a
09:52:10 11 representation.

09:52:10 12 MR. BURKE: You don't have to
09:52:12 13 accept that. What is -- that's not a question.
09:52:16 14 Ask a question.

09:52:16 15 Q. I'm explaining. Dr. Peerless, if
09:52:18 16 what I'm saying is true, and only five of the
09:52:22 17 then seven directors voted in favor of the
09:52:24 18 merger, do you believe that the OHSL Board
09:52:30 19 unanimously voted in favor of the merger?

09:52:32 20 MR. BURKE: Objection. Misstates
09:52:34 21 the record, as you know. Calls for
09:52:36 22 speculation. Asked and answered. This witness
09:52:38 23 has no foundation as to this answer.

09:52:40 24 A. I really don't know. I don't know

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09:53:32 1 MR. BURKE: Objection. Calls for
09:53:34 2 speculation. Misstates the document.

09:53:36 3 A. Yes.

09:53:38 4 Q. Do you believe that that sentence
09:53:40 5 intends to give shareholders the impression
09:53:42 6 that all of the OHSL directors unanimously
09:53:48 7 believed that the merger was in the best
09:53:50 8 interest of OHSL stockholders?

09:53:52 9 MR. BURKE: Objection. Calls for
09:53:52 10 speculation.

09:53:52 11 A. I really can't tell.

09:53:54 12 Q. Is there any other interpretation
09:53:58 13 to that sentence?

09:53:56 14 MR. BURKE: Objection. Calls for
09:53:58 15 speculation. No foundation.

09:53:58 16 A. I can't, I can't --

09:54:00 17 Q. You can't give me an alternate
09:54:02 18 interpretation today, correct?

09:54:04 19 MR. BURKE: That's exactly what he
09:54:04 20 just said.

09:54:06 21 A. Yes, I can't.

09:54:08 22 Q. Did you ever learn from any source
09:54:08 23 that one of the OHSL directors had resigned in
09:54:12 24 part in protest of the OHSL-Provident merger?

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09:52:42 1 their rules. I don't know what -- I mean, I
09:52:48 2 don't know what their rules are as far as
09:52:48 3 absent members are concerned.

09:52:50 4 Q. As far as what members?

09:52:52 5 A. As far as absent members are
09:52:54 6 concerned.

09:52:54 7 Q. Well, let me represent to you that
09:52:56 8 the chairman of the Board was in the room and
09:52:58 9 did not vote, but abstained.

09:53:00 10 MR. BURKE: Objection. Misstates
09:53:02 11 the record, as you clearly know.

09:53:04 12 A. I, I don't know. I really can't
09:53:06 13 tell.

09:53:12 14 Q. Dr. Peerless, let's talk about the
09:53:14 15 second concept here. Your Board of Directors
09:53:16 16 unanimously believes that it is in the best
09:53:20 17 interest of OHSL stockholders. Do you see
09:53:24 18 that?

09:53:24 19 A. Yes.

09:53:24 20 MR. BURKE: Objection.

09:53:24 21 Q. And I read that in a way to focus
09:53:26 22 only on the second part of the sentence, but I
09:53:30 23 also included the adverb unanimously. Do you
09:53:32 24 see that?

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09:54:18 1 MR. BURKE: Objection. Calls for
09:54:18 2 speculation.

09:54:18 3 A. No.

09:54:18 4 MR. BURKE: Assumes facts not in
09:54:20 5 evidence.

09:54:20 6 Q. Do you think that that would be
09:54:22 7 material information that the merging companies
09:54:24 8 should inform the shareholders of?

09:54:26 9 MR. BURKE: Objection. Calls for
09:54:28 10 speculation.

09:54:28 11 A. I really don't know.

09:54:30 12 Q. How would you go about making that
09:54:32 13 analysis?

09:54:32 14 MR. BURKE: Objection. Calls for
09:54:34 15 speculation.

09:54:34 16 A. I don't know. I mean, they -- it
09:54:38 17 tells you they unanimously approved.

09:54:42 18 Q. It does say that, doesn't it?

09:54:44 19 A. Yeah.

09:54:44 20 Q. And that wouldn't be correct if
09:54:46 21 only five of the then --

09:54:48 22 MR. BURKE: Objection.

09:54:48 23 Q. -- seven directors --

09:54:50 24 MR. BURKE: You're arguing --

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09:54:50 1 Q. -- voted in favor, correct?
09:54:52 2 MR. BURKE: You're arguing with
09:54:52 3 the witness. Asked and answered.
09:54:54 4 A. I don't know.
09:54:54 5 MR. BURKE: He's answered this
09:54:56 6 several times now.
09:54:58 7 A. I don't know.
09:55:02 8 Q. Dr. Peerless, with respect to the
09:55:04 9 Provident-National City merger, you voted in
09:55:06 10 favor of that merger as a director, correct?
09:55:10 11 A. Yes.
09:55:10 12 Q. And you did that because you
09:55:12 13 believed that that merger was in the best
09:55:16 14 interest of Provident shareholders, correct?
09:55:16 15 A. Right.
09:55:20 16 Q. Your fellow directors all voted in
09:55:22 17 favor of the merger as directors, correct?
09:55:22 18 A. Right.
09:55:26 19 Q. And do you believe they did that
09:55:26 20 because they believed the merger was in the
09:55:30 21 best interest of Provident shareholders?
09:55:32 22 MR. BURKE: Objection. Calls for
09:55:34 23 speculation. You may answer.
09:55:34 24 A. Yes.

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09:56:28 1 CEO did not believe that the merger was in the
09:56:34 2 best interest of OHSL shareholders, that it
09:56:36 3 would be consistent with his fiduciary duties
09:56:40 4 to vote in favor of the merger?
09:56:40 5 MR. BURKE: Objection. Calls for
09:56:42 6 speculation. No foundation.
09:56:44 7 A. I don't know. I have absolutely
09:56:46 8 no idea.
09:56:48 9 Q. Under what circumstances would it
09:56:48 10 be appropriate for the CEO of Oak Hills to do
09:56:50 11 what I just said?
09:56:52 12 MR. BURKE: Objection. Calls for
09:56:52 13 speculation. No foundation.
09:56:54 14 A. I don't know. You'd have to ask
09:56:54 15 him.
09:56:56 16 Q. Well, I did ask him, but I'm
09:56:58 17 entitled to your opinion as well, Doctor.
09:57:00 18 MR. BURKE: No.
09:57:02 19 A. I don't know.
09:57:02 20 MR. BURKE: You're not entitled to
09:57:04 21 his opinion if he doesn't have one.
09:57:04 22 A. I really don't know.
09:57:06 23 MR. BURKE: He's answered this
09:57:08 24 question.

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09:55:36 1 Q. Dr. Peerless, how did you vote
09:55:36 2 your personal shares with respect to the
09:55:38 3 Provident-National City merger?
09:55:40 4 A. In favor.
09:55:42 5 Q. And so you voted consistently with
09:55:46 6 your vote as a director, correct?
09:55:46 7 A. Right.
09:55:54 8 Q. If you did not believe that the
09:55:58 9 Provident-National City merger was in the best
09:56:02 10 interest of Provident shareholders, but if you
09:56:04 11 voted in favor of it because you just gave up,
09:56:06 12 would that be consistent with your
09:56:08 13 understanding of your fiduciary duties?
09:56:12 14 MR. BURKE: Objection to form.
09:56:12 15 That question makes no sense.
09:56:14 16 A. I don't understand that at all.
09:56:14 17 Q. Okay. Are you familiar with the
09:56:18 18 concept of fiduciary duties?
09:56:18 19 A. Yes.
09:56:18 20 Q. What are the fiduciary duties that
09:56:20 21 a director of a public company owes to the
09:56:22 22 shareholders?
09:56:24 23 A. To do the correct thing.
09:56:24 24 Q. And do you believe that if OHSL's

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09:57:08 1 A. I really don't know. I don't know
09:57:10 2 why he did it or what he did.
09:57:10 3 Q. Okay. Dr. Peerless, let me help
09:57:12 4 you on the first part of the question. You
09:57:14 5 said you don't know what he did. And let me
09:57:18 6 represent to you that he changed his vote from
09:57:20 7 abstain on July 22nd, 1999, to in favor of on
09:57:26 8 August 2nd, 1999 -- this is his vote as a
09:57:28 9 director -- not because he believed in the
09:57:30 10 merger, but because he just gave up.
09:57:34 11 MR. BURKE: Objection. Absolutely
09:57:34 12 mischaracterizes the record. Calls for
09:57:36 13 speculation.
09:57:36 14 A. That's -- I can't read somebody
09:57:40 15 else's mind.
09:57:42 16 Q. Dr. Peerless, respectfully, I'm
09:57:44 17 not asking you to read someone's mind. I'm
09:57:46 18 asking if that conduct is consistent with your
09:57:50 19 understanding of your fiduciary duties.
09:57:52 20 MR. BURKE: Objection. He's asked
09:57:52 21 and answered this question. He's -- calls for
09:57:56 22 speculation.
09:57:56 23 A. I cannot tell you his thoughts
09:57:58 24 because I don't know his thoughts. I don't

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09:58:02 1 know why he gave up or he didn't give up or he
09:58:08 2 did give up. I mean, I have no idea.

09:58:08 3 Q. Dr. Peerless, how did you expect
09:58:12 4 your fellow Provident directors to vote their
09:58:16 5 personal shares with respect to the
09:58:18 6 Provident-National City merger?

09:58:20 7 MR. BURKE: Objection. Calls for
09:58:20 8 speculation.

09:58:22 9 A. Depended on how they felt about
09:58:24 10 it.

09:58:24 11 Q. And how do you believe that your
09:58:28 12 fellow Provident directors felt about the
09:58:30 13 merger?

09:58:32 14 MR. BURKE: Objection.

09:58:32 15 A. I felt that they were favorable.

09:58:34 16 Q. And you expected your fellow
09:58:36 17 Provident directors to vote their personal
09:58:38 18 shares in favor of the merger, correct?

09:58:40 19 A. Yes.

09:58:40 20 MR. BURKE: Objection. Calls for
09:58:40 21 speculation.

09:58:42 22 Q. And that conduct in your view is
09:58:44 23 consistent with their votes as directors, that
09:58:46 24 the merger was in the best interest of

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09:59:34 1 A. I try to be.

09:59:34 2 Q. Do you believe that what Mr.
09:59:36 3 Hanauer did, voting in favor of the merger as a
09:59:40 4 director but voting his personal shares against
09:59:42 5 the merger without telling anyone, was fair to
09:59:46 6 the OHSL shareholders?

09:59:48 7 MR. BURKE: Objection. Calls for
09:59:48 8 speculation. No foundation. He's already
09:59:50 9 testified about this.

09:59:52 10 A. I, I really don't know. I can't
09:59:54 11 pass on what he did or why he did it.

09:59:56 12 Q. Dr. Peerless, you understand that
10:00:00 13 in some circumstances if I ask for an opinion,
10:00:02 14 I'm entitled to your opinion, correct?

10:00:06 15 MR. BURKE: No, you're not.
10:00:08 16 Michael, you're not. And stop making that
10:00:08 17 representation. You're allowed to ask if he
10:00:10 18 has an opinion and if he has one, he can give
10:00:12 19 it to you. And if he doesn't, he doesn't have
10:00:14 20 to. You're not entitled to an opinion, so
10:00:16 21 please stop making that representation to the
10:00:18 22 witness.

10:00:20 23 MR. BRAUTIGAM: Jim, we don't need
10:00:22 24 speaking objections.

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10:00:22 1 MR. BURKE: It's not a speaking
10:00:22 2 objection. That's an improper question and you
10:00:24 3 know it.

10:00:24 4 BY MR. BRAUTIGAM:

10:00:26 5 Q. Dr. Peerless, let's focus on the
10:00:28 6 next sentence in that paragraph. The Board
10:00:30 7 unanimously recommends and advises that you
10:00:32 8 approve the acquisition at the special meeting
10:00:36 9 so that the transaction may be completed. Do
10:00:40 10 you see that?

10:00:40 11 A. Yes.

10:00:44 12 Q. Just reading that today -- I
10:00:46 13 understand this is the first time you've seen
10:00:48 14 this document -- would it be fair to conclude
10:00:50 15 that the entire OHSL Board would vote their
10:00:56 16 personal shares in favor of the merger?

10:00:58 17 MR. BURKE: Objection. Asked and
10:01:00 18 answered. Calls for speculation.

10:01:00 19 A. I really don't know. I can't tell
10:01:02 20 you what they're doing or why they did it.

10:01:08 21 Q. Is there any other reading of that
10:01:10 22 sentence -- is there any other conclusion that
10:01:12 23 you can draw from reading that sentence?

10:01:14 24 MR. BURKE: Objection. Calls for

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10:01:14 1 speculation. No foundation.
 10:01:22 2 A. It says that they voted to approve
 10:01:24 3 it.
 10:01:26 4 Q. Actually, it also says that they
 10:01:28 5 recommend and advise that the shareholders vote
 10:01:30 6 to approve the merger, correct?
 10:01:34 7 A. Right.
 10:01:34 8 MR. BURKE: Objection. The
 10:01:34 9 document speaks for itself.
 10:01:36 10 Q. So Mr. Hanauer didn't take his own
 10:01:36 11 advice, correct?
 10:01:40 12 MR. BURKE: Objection. Calls for
 10:01:40 13 speculation.
 10:01:42 14 A. I don't know what Mr. Hanauer did.
 10:01:44 15 Q. Let me represent to you that he
 10:01:44 16 voted his personal shares, 123,000 of them,
 10:01:46 17 against the merger. If that's true, would it
 10:01:50 18 appear to you that Mr. Hanauer, the former CEO
 10:01:54 19 of OHSL, did not take the advice that he was
 10:01:56 20 giving to the OHSL shareholders?
 10:01:58 21 MR. BURKE: Objection. Calls for
 10:02:00 22 speculation. No foundation.
 10:02:02 23 A. No.
 10:02:02 24 MR. BURKE: He's asked and

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10:03:12 1 merger in any way?
 10:03:12 2 MR. BURKE: Objection.
 10:03:14 3 A. I don't think so.
 10:03:16 4 Q. Why not?
 10:03:16 5 A. Because they were dealing with
 10:03:18 6 what they had, not what -- what was going to
 10:03:20 7 come in a year or so.
 10:03:24 8 Q. Well, weren't OHSL's shareholders
 10:03:30 9 to receive Provident stock if the merger was
 10:03:32 10 approved?
 10:03:32 11 A. Yes.
 10:03:34 12 Q. So wouldn't it stand to reason
 10:03:38 13 that OHSL's shareholders would want to consider
 10:03:42 14 Provident's financial future, if you will, if
 10:03:48 15 they were going to receive Provident stock?
 10:03:48 16 MR. BURKE: Objection. Calls for
 10:03:48 17 speculation. No foundation.
 10:03:50 18 A. I don't know.
 10:03:52 19 Q. Did McDonald use financial
 10:03:54 20 forecasts in their analysis in coming up with a
 10:03:58 21 fairness opinion?
 10:04:00 22 MR. BURKE: Objection. No
 10:04:00 23 foundation.
 10:04:02 24 A. I don't know.

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10:02:04 1 answered this a dozen times.
 10:02:06 2 A. I really don't know. Ask Mr.
 10:02:06 3 Hanauer.
 10:02:30 4 Q. Dr. Peerless, what are financial
 10:02:32 5 forecasts?
 10:02:34 6 MR. BURKE: Objection. Calls for
 10:02:34 7 speculation, no foundation.
 10:02:38 8 A. Outlook of something for the
 10:02:40 9 future.
 10:02:42 10 Q. Is it important that financial
 10:02:44 11 forecasts be accurate?
 10:02:46 12 MR. BURKE: Objection. No
 10:02:46 13 foundation.
 10:02:48 14 A. As accurate as they can.
 10:02:50 15 Q. Did Provident use financial
 10:02:52 16 forecasts?
 10:02:54 17 A. I really don't know.
 10:02:56 18 Q. Don't all companies use financial
 10:02:58 19 forecasts?
 10:03:00 20 MR. BURKE: Objection.
 10:03:00 21 Speculation, no foundation.
 10:03:02 22 A. I don't know.
 10:03:06 23 Q. Was the future performance of
 10:03:08 24 Provident important to the OHSL-Provident

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10:04:02 1 Q. Let me direct your attention to
 10:04:04 2 page three of the fairness opinion attached as
 10:04:08 3 Annex C.
 10:04:16 4 MR. BURKE: Page three?
 10:04:16 5 Q. Yes.
 10:04:16 6 A. All right.
 10:04:20 7 Q. Dr. Peerless, would you read the
 10:04:22 8 sentence to yourself with respect to financial
 10:04:24 9 forecasts?
 10:04:42 10 A. Okay.
 10:04:46 11 Q. Does it appear to you that
 10:04:46 12 Provident did rely on financial forecasts?
 10:04:50 13 MR. BURKE: Objection. Calls for
 10:04:50 14 speculation. No foundation.
 10:04:54 15 A. According to this report, yes.
 10:04:56 16 Q. Does it appear to you that
 10:04:58 17 McDonald did rely on estimates of the future
 10:05:02 18 performance of Provident?
 10:05:04 19 MR. BURKE: Objection. Calls for
 10:05:04 20 speculation. No foundation.
 10:05:08 21 A. I don't -- I don't know.
 10:05:08 22 Q. Well, isn't there a reference to
 10:05:10 23 future performance of OHSL, PFGI, and the
 10:05:14 24 combined companies?

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10:05:16 1 MR. BURKE: Objection. The
 10:05:16 2 document speaks for itself. He's already told
 10:05:18 3 you he doesn't know anything about this.
 10:05:20 4 A. I don't know.
 10:05:20 5 Q. You don't know if that reference
 10:05:22 6 appears there?
 10:05:22 7 A. No. I don't know whether McDonald
 10:05:28 8 assumed this or whether the bank did. I really
 10:05:30 9 have no idea.
 10:05:30 10 Q. When you say "assumed this," what
 10:05:32 11 exactly are you referring to?
 10:05:34 12 A. Assumed the future -- the future
 10:05:40 13 status of each stock.
 10:05:42 14 Q. Doesn't it say that right there in
 10:05:44 15 that paragraph?
 10:05:46 16 MR. BURKE: Objection. You're
 10:05:46 17 arguing with the witness.
 10:05:48 18 A. No, I --
 10:05:48 19 MR. BURKE: He's told you he can't
 10:05:50 20 answer that.
 10:05:50 21 MR. BRAUTIGAM: Jim, we don't need
 10:05:52 22 speaking objections.
 10:05:52 23 MR. BURKE: We also don't need you
 10:05:54 24 to argue with a witness and ask repeated

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10:08:06 1 right column, Burke's response: Hanauer
 10:08:08 2 opposed the Provident takeover because he
 10:08:10 3 wanted Oak Hills to remain independent. Do you
 10:08:12 4 see that?
 10:08:14 5 A. Um-hmm.
 10:08:14 6 Q. And the next sentence is, but he
 10:08:16 7 also believed the transaction was fair to
 10:08:18 8 shareholders. Do you see that?
 10:08:20 9 A. Um-hmm.
 10:08:20 10 Q. Do you believe that wanting the
 10:08:22 11 company to remain independent and the
 10:08:24 12 transaction being fair to shareholders are two
 10:08:26 13 separate and distinct concepts?
 10:08:32 14 MR. BURKE: Objection. Calls for
 10:08:32 15 speculation. No foundation.
 10:08:34 16 A. I really don't know. I mean, this
 10:08:34 17 is just his opinion or --
 10:08:36 18 MR. BURKE: And you also know that
 10:08:40 19 the veracity of that quote has been put into
 10:08:42 20 question, correct, Mr. Brautigam? Which you
 10:08:44 21 have not advised the witness of.
 10:08:46 22 MR. BRAUTIGAM: Jim, when we take
 10:08:48 23 your deposition, we'll see what the veracity of
 10:08:50 24 the quote is.

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10:05:56 1 questions when he's already answered this.
 10:05:56 2 MR. BRAUTIGAM: I'm not arguing
 10:06:00 3 with the witness.
 10:06:00 4 MR. BURKE: I believe you are.
 10:06:02 5 MR. BRAUTIGAM: I'm not asking
 10:06:02 6 repeated questions that have been answered.
 10:06:04 7 A. I don't know.
 10:06:04 8 BY MR. BRAUTIGAM:
 10:06:20 9 Q. Dr. Peerless, let me hand you what
 10:06:24 10 has previously been marked as Plaintiff's
 10:06:26 11 Exhibit 1. Do you read the Cincinnati Business
 10:06:28 12 Courier?
 10:06:28 13 A. No.
 10:06:30 14 Q. Do you ever read it?
 10:06:30 15 A. Occasionally.
 10:06:34 16 Q. Did you happen to see this article
 10:06:34 17 before?
 10:06:36 18 A. No.
 10:06:36 19 Q. Can I direct your attention to the
 10:06:38 20 extreme right-hand column and ask you to read
 10:06:42 21 to yourself the first two paragraphs?
 10:07:56 22 A. Um-hmm.
 10:08:02 23 Q. Dr. Peerless, do you see where it
 10:08:02 24 says in the first paragraph in the extreme

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10:08:50 1 MR. BURKE: You know what it is.
 10:08:52 2 You're asking for speculation. You may answer.
 10:08:54 3 A. I don't know.
 10:08:54 4 BY MR. BRAUTIGAM:
 10:08:56 5 Q. Doctor --
 10:08:56 6 A. It seems to be an incoherent
 10:09:00 7 response.
 10:09:00 8 Q. Why?
 10:09:02 9 A. What?
 10:09:02 10 Q. Why?
 10:09:02 11 A. Because in the one way he's
 10:09:06 12 opposing the takeover because he wants it to
 10:09:10 13 remain independent. But in the second he's
 10:09:16 14 saying that the takeover is okay.
 10:09:18 15 Q. Well, actually he's saying that
 10:09:20 16 it's fair, correct?
 10:09:22 17 A. Yeah.
 10:09:22 18 MR. BURKE: Objection. You're
 10:09:22 19 arguing with the witness.
 10:09:26 20 Q. Dr. Peerless, you understand that
 10:09:28 21 Ken Hanauer was OHSL's former CEO, correct?
 10:09:32 22 MR. BURKE: Objection. Calls for
 10:09:34 23 speculation. No foundation.
 10:09:34 24 A. Yes, yes.

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10:09:36 1 Q. And if his opinion was that he
 10:09:38 2 felt it was in the best interest of OHSL
 10:09:40 3 shareholders to remain independent, do you
 10:09:42 4 believe that that opinion should have been
 10:09:44 5 disclosed in Defendant's Exhibit 1?
 10:09:46 6 MR. BURKE: Objection. Calls for
 10:09:48 7 speculation.
 10:09:50 8 A. That was just his opinion.
 10:09:52 9 Q. But don't you believe that the
 10:09:54 10 opinion of OHSL's CEO, its largest shareholder,
 10:10:00 11 its chairman of the Board designate, and the
 10:10:02 12 only member of management on the Board, would
 10:10:04 13 be important to OHSL's shareholders to
 10:10:10 14 consider?
 10:10:10 15 MR. BURKE: Objection. Calls for
 10:10:12 16 speculation. No foundation. Assumes facts
 10:10:12 17 that are not true.
 10:10:14 18 A. I would assume that he would have
 10:10:16 19 voted against it then.
 10:10:20 20 Q. And you would make that assumption
 10:10:21 21 because that's your understanding of a
 10:10:22 22 director's fiduciary duties, correct?
 10:10:24 23 MR. BURKE: Objection. Calls for
 10:10:24 24 speculation.

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10:16:26 1 personally insulted you?
 10:16:28 2 A. Yeah. I'm not involved in any
 10:16:30 3 fraudulent dealings, nor was the Board of the
 10:16:34 4 bank.
 10:16:34 5 Q. And what's your basis for that
 10:16:36 6 statement?
 10:16:38 7 A. Because we didn't do anything
 10:16:38 8 fraudulent.
 10:16:40 9 Q. Well, Dr. Peerless, you don't know
 10:16:44 10 if Defendant's Exhibit 1 contains any
 10:16:48 11 misstatements because you've never seen it
 10:16:50 12 before today, correct?
 10:16:52 13 A. Um-hmm.
 10:16:52 14 Q. Yes?
 10:16:52 15 A. Yes.
 10:16:54 16 Q. So hypothetically speaking, if
 10:16:56 17 Defendant's Exhibit 1 contained material
 10:16:58 18 misstatements or material omissions, do you
 10:17:02 19 believe that that would be fraud?
 10:17:06 20 MR. BURKE: Objection. Calls for
 10:17:06 21 a legal conclusion, and you know --
 10:17:10 22 A. I don't know.
 10:17:10 23 MR. BURKE: -- that that's not a
 10:17:10 24 proper question.

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10:10:26 1 A. No.
 10:10:26 2 Q. Why would you make that
 10:10:28 3 assumption?
 10:10:28 4 MR. BURKE: Objection, form.
 10:10:28 5 A. If he were against it, he would
 10:10:30 6 vote against it.
 10:10:32 7 Q. What if he was against it, but he
 10:10:34 8 voted in favor of it because he just gave up?
 10:10:36 9 MR. BURKE: Objection. Calls for
 10:10:38 10 speculation.
 10:10:38 11 A. I can't tell you that because I
 10:10:40 12 don't know. I don't know why he gave up.
 10:10:42 13 Q. Okay. Dr. Peerless --
 10:10:44 14 MR. BURKE: Let's take five
 10:10:44 15 minutes for a break, if we may.
 10:10:46 16 MR. BRAUTIGAM: Certainly.
 10:10:48 17 (Brief recess.)
 10:16:02 18 Q. Dr. Peerless, did you have
 10:16:06 19 something to add with respect to Plaintiff's
 10:16:08 20 Exhibit 1?
 10:16:10 21 A. I feel insulted that the word --
 10:16:16 22 this is fraud. Absolutely, it's disgusting to
 10:16:20 23 me that anybody would even think that.
 10:16:24 24 Q. Are you suggesting that I

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10:17:12 1 A. I don't know. I don't think that
 10:17:14 2 there was any possibility of there being any
 10:17:18 3 intentional fraud here.
 10:17:16 4 Q. What about unintentional fraud?
 10:17:20 5 MR. BURKE: Objection. There's no
 10:17:20 6 such thing, Mr. Brautigam. Legal conclusion.
 10:17:22 7 Q. What about unintentional fraud?
 10:17:24 8 MR. BURKE: Objection. Calls for
 10:17:26 9 speculation.
 10:17:28 10 A. I don't see that.
 10:17:26 11 Q. Well, you don't see it in part
 10:17:28 12 because you've never read Defendant's Exhibit
 10:17:32 13 1, correct?
 10:17:32 14 MR. BURKE: You're arguing with
 10:17:34 15 the witness, Mr. Brautigam.
 10:17:34 16 A. No, no. Really, I know the men we
 10:17:38 17 are dealing with, they are not fraudulent
 10:17:38 18 people.
 10:17:40 19 Q. Is that true for the OHSL
 10:17:40 20 directors as well?
 10:17:42 21 A. I don't know them.
 10:17:44 22 Q. Dr. Peerless, if this is a joint
 10:17:48 23 document and it comes from both OHSL and
 10:17:50 24 Provident, you couldn't say that there's no

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10:17:52 1 fraud in there based on the men you're dealing
10:17:56 2 with, with respect to Oak Hills'
10:17:58 3 contribution --

10:17:58 4 MR. BURKE: Objection. Calls for
10:18:00 5 speculation.

10:18:00 6 A. I don't know Oak Hills at all.

10:18:02 7 Q. So you don't know one way or the
10:18:06 8 other if they intended to mislead the
10:18:08 9 shareholders, correct?

10:18:10 10 MR. BURKE: Objection. Calls for
10:18:10 11 speculation.

10:18:10 12 A. I really don't know. I really
10:18:12 13 don't know.

10:18:14 14 Q. Dr. Peerless, I've handed
10:18:18 15 Plaintiff's Exhibit 114 to you. Let me direct
10:18:26 16 your attention to page eight. There is a
10:18:42 17 section there that says, The purpose of proxy
10:18:44 18 materials. Do you see that?

10:18:44 19 A. Um-hmm.

10:18:46 20 Q. Do you agree with this sentence,
10:18:48 21 The purpose of any proxy materials or
10:18:50 22 prospectus is to provide shareholders with all
10:18:54 23 of the information necessary for them to make a
10:18:58 24 knowledgeable investment decision regarding

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10:19:42 1 foundation.

10:19:42 2 A. I don't know.

10:19:42 3 Q. Can you think of any?

10:19:44 4 MR. BURKE: Objection, same.

10:19:46 5 A. No.

10:19:46 6 Q. Do you agree that the Securities &
10:19:50 7 Exchange Commission requires under Regulation C
10:19:52 8 that information in a prospectus be presented
10:19:54 9 in, quote, clear, concise and understandable,
10:19:56 10 unquote, language --

10:19:58 11 MR. BURKE: Objection. Calls
10:19:58 12 for --

10:20:00 13 Q. -- and that it not be misleading?

10:20:02 14 MR. BURKE: Objection. Calls for
10:20:02 15 a legal conclusion and speculation.

10:20:02 16 A. Um-hmm.

10:20:04 17 Q. Do you agree with that?

10:20:04 18 A. Yeah.

10:20:04 19 Q. Do you agree that it is incumbent
10:20:06 20 upon the Board of Directors and their advisors
10:20:08 21 to impart all relevant information to
10:20:12 22 shareholders regarding a proposed merger and to
10:20:16 23 present it in such a way that it is readily
10:20:18 24 comprehensible to shareholders?

10:18:58 1 their shares?

10:19:00 2 MR. BURKE: Objection. You
10:19:00 3 haven't even asked the witness to identify this
10:19:02 4 document, if he's seen it or anything else.
10:19:04 5 There's no foundation for any question about
10:19:06 6 this document or this sentence. You're just
10:19:08 7 pulling out a sentence and asking him if he
10:19:10 8 agrees with it. That's an improper question.
10:19:12 9 No foundation, calls for speculation.

10:19:14 10 A. I don't know.

10:19:18 11 MR. BURKE: Are you going to ask
10:19:18 12 him to identify what this is?

10:19:22 13 MR. BRAUTIGAM: Jim, I'm going to
10:19:22 14 ask my questions. If you have questions, you
10:19:24 15 can ask when I'm done.

10:19:26 16 MR. BURKE: All right.

10:19:28 17 BY MR. BRAUTIGAM:

10:19:28 18 Q. Dr. Peerless, under what
10:19:30 19 circumstances would it be okay for proxy
10:19:32 20 material not to include all of the information
10:19:34 21 necessary for the shareholders to make an
10:19:36 22 investment decision?

10:19:38 23 MR. BURKE: Objection. Calls for
10:19:40 24 speculation. Calls for a legal conclusion. No

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10:20:22 1 MR. BURKE: Objection. Calls for
10:20:24 2 speculation.

10:20:24 3 A. Yes.

10:20:24 4 Q. Do you believe that if an OHSL
10:20:26 5 director resigned in part in protest over the
10:20:30 6 merger, that this is information that should be
10:20:32 7 included in the proxy materials?

10:20:34 8 MR. BURKE: Objection. Calls for
10:20:36 9 speculation.

10:20:36 10 A. I, I have no idea. I have no
10:20:38 11 idea.

10:20:38 12 Q. Do you believe that it was
10:20:40 13 information that a reasonable OHSL shareholder
10:20:46 14 would want to consider in making a decision on
10:20:48 15 how to vote on the OHSL-Provident merger?

10:20:52 16 MR. BURKE: Objection. Asked and
10:20:54 17 answered. Calls for speculation. No
10:20:54 18 foundation.

10:20:56 19 A. I don't know. I can't speak for
10:20:58 20 somebody else.

10:21:02 21 Q. Dr. Peerless, as a former
10:21:04 22 Provident shareholder, if Dr. Steger, who is
10:21:06 23 chairman of the audit committee, resigned in
10:21:10 24 part in protest over the Provident-National

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10:21:14 1 City merger, would you want to know about that?
10:21:18 2 MR. BURKE: Objection. Calls for
10:21:18 3 speculation. Never happened. You may answer.
10:21:20 4 A. I don't -- I don't know.
10:21:24 5 Q. Don't you think that as a
10:21:26 6 shareholder, you would be entitled to know such
10:21:28 7 information?
10:21:28 8 MR. BURKE: Objection. Asked and
10:21:30 9 answered.
10:21:30 10 A. I, I really don't know. I don't
10:21:32 11 know what should be included in these things.
10:21:36 12 Q. Who knows what should be included
10:21:38 13 in these things?
10:21:38 14 MR. BURKE: Objection --
10:21:40 15 A. The people who write them.
10:21:42 16 Q. Who wrote Defendant's Exhibit 1?
10:21:44 17 A. I don't know.
10:21:48 18 Q. Do you have any idea?
10:21:50 19 A. (Witness shook head.)
10:21:50 20 Q. No?
10:21:50 21 A. No.
10:21:56 22 Q. If Defendant's Exhibit 1 went out
10:21:58 23 in your name, do you think it would be a good
10:22:00 24 idea to know who wrote the document?

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10:22:52 1 the 1933 Act.
10:22:54 2 Q. Are you familiar with the --
10:22:56 3 MR. BURKE: Wait a minute. If
10:22:56 4 you're going to read -- let me just ask you a
10:22:58 5 question. Are you going to read this entire
10:23:00 6 expert's report and have him agree or disagree
10:23:02 7 with every sentence?
10:23:04 8 MR. BRAUTIGAM: No.
10:23:06 9 MR. BURKE: Can you give me an
10:23:08 10 estimate of how much longer we're going to do
10:23:08 11 this, because if we're going to do this for any
10:23:10 12 extended period, I'm going to call Magistrate
10:23:14 13 Judge Hogan.
10:23:16 14 MR. BRAUTIGAM: Okay, let's call.
10:23:18 15 MR. BURKE: Okay.
10:23:18 16 (Brief recess.)
10:24:56 17 MR. BRAUTIGAM: Are you suggesting
10:24:58 18 that these questions have been asked and
10:25:00 19 answered?
10:25:00 20 MR. BURKE: I'm suggesting that
10:25:02 21 these questions are completely improper.
10:25:04 22 MR. BRAUTIGAM: Okay. Why?
10:25:04 23 MR. BURKE: Because you are taking
10:25:06 24 an expert report that was produced to us

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10:22:04 1 MR. BURKE: Objection. Calls for
10:22:04 2 speculation, argumentative.
10:22:08 3 A. I, I don't know.
10:22:10 4 Q. Do you believe that the strength
10:22:10 5 of the United States financial markets is in
10:22:14 6 the reporting and disclosure rules promulgated
10:22:16 7 by the SEC and implemented by public companies
10:22:18 8 and their advisors?
10:22:20 9 MR. BURKE: This is ridiculous.
10:22:22 10 You're reading an expert report and asking him
10:22:24 11 if he agrees with every sentence. Overbroad,
10:22:28 12 no foundation. Calls for speculation.
10:22:34 13 A. I don't -- I don't know.
10:22:36 14 Q. Are you familiar with the
10:22:36 15 Securities Act of 1933?
10:22:36 16 MR. BURKE: Objection. Calls for
10:22:40 17 a legal conclusion.
10:22:40 18 A. No.
10:22:42 19 Q. Do you agree that the purpose of
10:22:44 20 the 1933 Act was to provide full and fair
10:22:48 21 disclosure and to prevent fraud?
10:22:50 22 MR. BURKE: Objection. Calls for
10:22:50 23 speculation.
10:22:52 24 A. I really don't know anything about

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10:25:08 1 yesterday, that this witness has no idea about,
10:25:12 2 and he's repeatedly told you in answer to the
10:25:14 3 first half a dozen questions, he really has no
10:25:18 4 opinion about whether this expert's opinions
10:25:18 5 are right or wrong.
10:25:20 6 And you're going to take every
10:25:22 7 sentence and feed it to this witness and ask
10:25:24 8 him if he agrees or disagrees with it. For you
10:25:26 9 to take your expert report and try to extract
10:25:28 10 it from a fact witness who has now told you on
10:25:32 11 about two or three occasions that he can't
10:25:34 12 answer these questions is improper.
10:25:36 13 And if you want to do this a
10:25:36 14 little bit more or there's a particular section
10:25:38 15 that you think is very important or relates to
10:25:40 16 some factual bases that this witness may be
10:25:44 17 able to testify about, that's fine. But if
10:25:46 18 you're going to take your expert's report and
10:25:48 19 ask him if he agrees or disagrees with every
10:25:50 20 sentence, we'll file a motion for protective
10:25:54 21 order. And we have the right to instruct him
10:26:04 22 not to answer to allow us to do that.
10:25:58 23 MR. BRAUTIGAM: I'm not going to
10:25:58 24 ask him about every sentence, but I have a lot

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10:26:00 1 more. By the way, I want to point out that
 10:26:02 2 most of what you said would be applicable to
 10:26:06 3 Exhibit 1, the proxy materials.
 10:26:08 4 MR. BURKE: Exactly. Which was
 10:26:08 5 exactly why that was improper as well.
 10:26:10 6 MR. BRAUTIGAM: Jim, let me
 10:26:12 7 clarify one thing. You're saying it's improper
 10:26:14 8 for me to go through the proxy materials with a
 10:26:16 9 Provident director? Is that your position?
 10:26:18 10 MR. BURKE: No. We're talking
 10:26:20 11 about the expert report, Mr. Brautigam. He
 10:26:22 12 says he doesn't recall seeing this, but I let
 10:26:24 13 you go. Did I say anything about the proxy
 10:26:26 14 materials when you asked him?
 10:26:28 15 MR. BRAUTIGAM: I disagree. You
 10:26:30 16 have made tons of speaking objections. Anyway,
 10:26:32 17 let's get back on the record -- back to the
 10:26:36 18 deposition.
 10:26:36 19 BY MR. BRAUTIGAM:
 10:26:38 20 Q. Dr. Peerless, do you believe that
 10:26:40 21 OHSL's shareholders were told that their Board
 10:26:42 22 of Directors voted unanimously to approve the
 10:26:44 23 merger and that it was in their best interest?
 10:26:46 24 MR. BURKE: Objection. Asked and

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10:27:26 1 what he said.
 10:27:28 2 Q. But you didn't read the proxy
 10:27:28 3 materials, so what would you be remembering
 10:27:32 4 from?
 10:27:32 5 MR. BURKE: Objection.
 10:27:32 6 Argumentative.
 10:27:34 7 A. Anything.
 10:27:40 8 Q. Do you agree that the fact that
 10:27:44 9 Mr. Hanauer opposed the merger, that he did not
 10:27:48 10 believe the merger was in the best interest of
 10:27:50 11 OHSL shareholders, that he directed his
 10:27:54 12 signature be removed from the first page of the
 10:27:56 13 cover letter, and that he voted his shares
 10:27:58 14 against the merger, to be material?
 10:28:02 15 MR. BURKE: Objection.
 10:28:02 16 A. I have no, no idea.
 10:28:04 17 Q. What factors would you need to
 10:28:06 18 consider in making a determination?
 10:28:08 19 MR. BURKE: Objection.
 10:28:08 20 A. I'd have to -- I'd have to talk to
 10:28:10 21 Mr. Hanauer.
 10:28:12 22 Q. Why would you need to talk to Mr.
 10:28:14 23 Hanauer?
 10:28:16 24 MR. BURKE: Objection. Calls for

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10:28:48 1 answered. Calls for speculation.
 10:28:50 2 A. I don't know. I don't know
 10:28:50 3 whether they were told or not.
 10:28:52 4 Q. Well, can you form an opinion
 10:28:52 5 based on reading that sentence of that
 10:28:54 6 paragraph, correct?
 10:28:56 7 MR. BURKE: Mr. Brautigam, you
 10:28:58 8 already asked him that question and he already
 10:27:00 9 answered it. Calls for speculation.
 10:27:02 10 MR. BRAUTIGAM: Different context.
 10:27:04 11 Different context.
 10:27:04 12 MR. BURKE: It's the same
 10:27:06 13 sentence. You already asked him about that.
 10:27:06 14 BY MR. BRAUTIGAM:
 10:27:08 15 Q. Dr. Peerless, is there any
 10:27:08 16 indication in the proxy materials that Mr.
 10:27:14 17 Hanauer, OHSL's CEO, was opposed to the
 10:27:18 18 transaction?
 10:27:20 19 MR. BURKE: Objection. Calls for
 10:27:20 20 speculation. Assumes facts not in evidence.
 10:27:24 21 A. I don't remember.
 10:27:24 22 Q. You don't remember?
 10:27:26 23 A. (Witness shook head.)
 10:27:26 24 MR. BURKE: Objection. That's

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10:28:16 1 speculation.
 10:28:18 2 A. It's his -- it's his things that
 10:28:18 3 we're talking about. He knows what he did and
 10:28:22 4 why he did it. I don't know why he did it or
 10:28:24 5 why he didn't do it.
 10:28:24 6 Q. Dr. Peerless, suppose Mr. Hanauer
 10:28:28 7 didn't tell the Provident Board how he felt.
 10:28:30 8 Do you think he might have defrauded you?
 10:28:32 9 MR. BURKE: Objection. Calls for
 10:28:32 10 speculation. Assumes facts not in evidence.
 10:28:36 11 A. I don't know. I don't know.
 10:28:36 12 Q. If he told the Provident Board one
 10:28:38 13 thing but he felt the opposite, don't you think
 10:28:42 14 that that could be fraud --
 10:28:44 15 MR. BURKE: Objection.
 10:28:44 16 Q. -- on the Provident Board?
 10:28:46 17 A. No.
 10:28:46 18 MR. BURKE: Calls for speculation.
 10:28:48 19 Calls for legal conclusion.
 10:28:50 20 Q. Why not?
 10:28:50 21 A. Because you listen to a man, what
 10:28:52 22 he has to say, and then you make your own
 10:28:54 23 opinions.
 10:28:54 24 Q. If Mr. Hanauer did not believe

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10:28:56 1 that the merger with Provident was in the best
10:29:00 2 interest of OHSL shareholders, do you believe
10:29:02 3 that he had an obligation to tell someone at
10:29:04 4 Provident?

10:29:06 5 MR. BURKE: Objection. Calls for
10:29:06 6 speculation.

10:29:08 7 A. I don't know.

10:29:08 8 MR. BURKE: Assumes facts not in
10:29:08 9 evidence.

10:29:10 10 A. Whatever he wants to do. If he
10:29:10 11 wanted to do it, he could have.

10:29:12 12 Q. If he wanted to do what?

10:29:14 13 A. To tell the Provident Board.

10:29:16 14 Q. Well, why do you believe that
10:29:20 15 whatever Mr. Hanauer wants to do is fine?

10:29:22 16 MR. BURKE: Objection.

10:29:22 17 A. I didn't say it was fine.

10:29:24 18 MR. BURKE: He's trying to
10:29:24 19 struggle with your questions.

10:29:26 20 A. I didn't say it was fine. I don't
10:29:28 21 know whether he -- what he did was fine.

10:29:32 22 Q. Okay. How would you evaluate Mr.
10:29:34 23 Hanauer's actions?

10:29:34 24 MR. BURKE: Objection. Calls for

10:29:36 1 speculation.

10:29:38 2 A. Indecisive.

10:29:38 3 Q. And why do you believe that Mr.
10:29:40 4 Hanauer was indecisive?

10:29:42 5 MR. BURKE: Objection. Calls for
10:29:42 6 speculation.

10:29:42 7 A. Because his actions aren't, aren't
10:29:56 8 plausible, let me put it that way.

10:30:00 9 Q. Aren't possible?

10:30:00 10 A. Plausible.

10:30:02 11 Q. Plausible. What do you mean by
10:30:04 12 plausible as you used it in the previous
10:30:06 13 answer?

10:30:08 14 MR. BURKE: Objection. Calls for
10:30:08 15 speculation. No firsthand knowledge. No
10:30:10 16 foundation.

10:30:10 17 A. I really don't know Mr. Hanauer.
10:30:12 18 I don't know why he did what he did. Obviously
10:30:18 19 if he were against it, he should have voted
10:30:18 20 against it.

10:30:24 21 Q. And if he were against it, the
10:30:26 22 shareholders should have been informed that he
10:30:28 23 was against it, correct?

10:30:30 24 MR. BURKE: Objection. Instruct

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10:30:30 1 the witness not to answer.

10:30:32 2 A. I really don't know.

10:30:32 3 MR. BURKE: You're beating a dead
10:30:34 4 horse.

10:30:34 5 MR. BRAUTIGAM: What's the basis
10:30:34 6 for the instruction?

10:30:36 7 MR. BURKE: Because you've asked
10:30:36 8 it fifteen times, Mr. Brautigam. And if you
10:30:40 9 recall, Judge Beckwith instructed you in your
10:30:42 10 phone call with Ms. Rowe, if Mr. Brautigam in
10:30:44 11 fact is asking the same question over and over
10:30:46 12 and over again, it is improper. And it is
10:30:48 13 improper, because that's what you're doing.

10:30:50 14 MR. BRAUTIGAM: Jim, I'm not doing
10:30:52 15 that.

10:30:52 16 MR. BURKE: Yes, you are.

10:30:54 17 MR. BRAUTIGAM: I didn't ask the
10:30:54 18 question 15 times. We don't need speaking
10:30:56 19 objections and we don't need you to raise your
10:30:58 20 voice with me.

10:31:00 21 MR. BURKE: I'm not raising my
10:31:00 22 voice with you. You'll know when I do.

10:31:02 23 MR. BRAUTIGAM: Are you
10:31:04 24 threatening me, Mr. Burke?

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10:31:06 1 MR. BURKE: Grow up, Mr.
10:31:06 2 Brautigam, for once.

10:31:10 3 BY MR. BRAUTIGAM:

10:31:10 4 Q. Dr. Peerless, OHSL was a regional
10:31:12 5 savings and loan with six branches in western
10:31:14 6 Cincinnati, correct?

10:31:16 7 MR. BURKE: Okay. I instruct the
10:31:18 8 witness not to answer.

10:31:20 9 A. I don't know.

10:31:20 10 MR. BURKE: Okay.

10:31:20 11 MR. BRAUTIGAM: You instructed the
10:31:22 12 witness not to answer?

10:31:22 13 MR. BURKE: Okay. If you're going
10:31:24 14 to continue to go through this --

10:31:26 15 MR. BRAUTIGAM: I am. Not every
10:31:28 16 sentence.

10:31:28 17 MR. BURKE: Go ahead.

10:31:30 18 MR. BRAUTIGAM: Okay.

10:31:30 19 MR. BURKE: Because for you to
10:31:30 20 take, as I told you before, just so we're
10:31:32 21 clear, an expert report that this witness has
10:31:34 22 never seen and for you to try to ask him if he
10:31:36 23 agrees or disagrees with every line of this,
10:31:40 24 particularly regarding subjects dealing with

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10:31:44 1 Oak Hills only, which he has repeatedly told
 10:31:46 2 you he has no knowledge of on several
 10:31:48 3 occasions, I will seek a protective order from
 10:31:52 4 the Court and instruct you not to answer.
 10:31:52 5 BY MR. BRAUTIGAM:
 10:31:52 6 Q. Dr. Peerless, it's not necessary
 10:31:56 7 for you to look at the exhibit anymore.
 10:32:00 8 MR. BURKE: Are you reading from
 10:32:00 9 it, Mr. Brautigam?
 10:32:02 10 MR. BRAUTIGAM: No, I'm not.
 10:32:02 11 MR. BURKE: Why is it in front of
 10:32:04 12 you?
 10:32:04 13 MR. BRAUTIGAM: I'm being inspired
 10:32:06 14 from it, I'm not reading it.
 10:32:08 15 MR. BURKE: If you're asking
 10:32:08 16 questions from this report, the simple game of
 10:32:10 17 taking it away from the witness not only is
 10:32:12 18 improper, but that's misleading and doesn't
 10:32:16 19 change the nature of my instruction.
 10:32:18 20 MR. BRAUTIGAM: Jim, we don't need
 10:32:18 21 speaking objections.
 10:32:20 22 MR. BURKE: I'm just stating it
 10:32:20 23 for the record because we're going to instruct
 10:32:22 24 the witness not to answer. That's not a

10:32:24 1 speaking objection, there's not a question
 10:32:26 2 pending.
 10:32:28 3 MR. BRAUTIGAM: Then you shouldn't
 10:32:28 4 be speaking, and let me ask questions.
 10:32:28 5 BY MR. BRAUTIGAM:
 10:32:32 6 Q. Do you believe that with respect
 10:32:32 7 to the OHSL-Provident merger, the role of the
 10:32:36 8 CEO as a source of information was extremely
 10:32:36 9 important?
 10:32:36 10 MR. BURKE: Instruct the witness
 10:32:40 11 not to answer on the grounds previously stated.
 10:32:42 12 A. I don't know.
 10:32:42 13 MR. BURKE: If I instruct you not
 10:32:44 14 to answer --
 10:32:44 15 A. Okay.
 10:32:44 16 MR. BURKE: -- you don't have to
 10:32:46 17 answer anymore.
 10:32:46 18 A. Okay.
 10:32:50 19 Q. Do you agree with what I'll
 10:32:52 20 represent to you is Mr. Herron's testimony:
 10:32:56 21 Mr. Herron was the resigning director at OHSL,
 10:33:00 22 that Mr. Herron believed Mr. Hanauer's
 10:33:02 23 opposition to the transaction would have,
 10:33:04 24 quote, significantly altered the total mix,

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10:33:06 1 unquote, of information available to
 10:33:10 2 shareholders?
 10:33:12 3 MR. BURKE: Instruct the witness
 10:33:12 4 not to answer. We're going to seek a
 10:33:14 5 protective order on this line of questioning.
 10:33:16 6 MR. BRAUTIGAM: Okay. Well, then
 10:33:16 7 we're done.
 10:33:18 8 MR. BURKE: Okay. Thank you.

10:33:18 9
 10:33:20 10
 10:33:22 11
 10:33:24 12
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 10:33:28 14
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 10:33:32 16
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 10:33:36 18
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 10:33:42 21
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 10:33:46 23
 10:33:48 24

(Deposition concluded at 10:33 a.m.)

1 CERTIFICATE
 2 STATE OF OHIO;
 3 SS:
 4 COUNTY OF HAMILTON;

5 I, Lee Ann Williams, a duly qualified and
 6 commissioned notary public in and for the State
 7 of Ohio, do hereby certify that prior to the
 8 giving of his deposition, the within named
 9 SIDNEY PEERLESS, M.D. was by me first duly
 10 sworn to testify the truth, the whole truth and
 11 nothing but the truth; that the foregoing pages
 12 constitute a true and correct transcript of
 13 testimony given at said time and place by said
 14 deponent; that said deposition was taken by me
 15 in stenotypy and transcribed under my
 16 supervision; that I am neither a relative of
 17 nor attorney for any of the parties to this
 18 litigation, nor relative of nor employee of any
 19 of their counsel, and have no interest
 20 whatsoever in the result of this litigation.

21 IN WITNESS WHEREOF, I hereunto set my hand
 22 and official seal of office at Cincinnati, Ohio
 23 this ___ day of _____, 2004.

24 MY COMMISSION EXPIRES:
 AUGUST 26, 2009 LEE ANN WILLIAMS, RPR/CRR
 NOTARY PUBLIC-STATE OF OHIO